

## Appointment

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**From:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Sent:** 1/11/2018 9:58:04 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]; Etchells, Elizabeth [Etchells.Elizabeth@epa.gov]; Carrillo, Andrea [Carrillo.Andrea@epa.gov]; Mathias, Scott [Mathias.Scott@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Casso, Ruben [Casso.Ruben@epa.gov]; Jones, Rhea [Jones.Rhea@epa.gov]  
**CC:** Smith, Suzanne [Smith.Suzanne@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]  
**Subject:** Texas SO2 DRR source designations  
**Location:** R6-ConfRm-GulfMexico-11O02/R6---11th-Floor  
**Start:** 1/17/2018 4:00:00 PM  
**End:** 1/17/2018 5:00:00 PM  
**Show Time As:** Tentative

**Conference line: (469) 250-2701**  
**Access code: 105-834#**

Discussion on designations and options for areas in Texas with DRR sources that have recently or will be shutting down.

*Status Update:* Monticello (Titus county - NA) shutdown January 4<sup>th</sup> and Sandow (Milam County – designated unclassifiable) shutdown on January 11<sup>th</sup>. Big Brown (Freestone and Anderson County-NA ) is scheduled to shutdown on February 12. The area around Martin Lake is designated non-attainment as well.

*Petition Update:* We received a new petition from TCEQ dated 12/11/17 to provide new information for the areas around Big Brown and Monticello designated non-attainment. In the petition, TCEQ notes the shutdowns, the resources that would be needed for a redesignation request and maintenance SIP if EPA does not redesignate these areas now (attainment demonstration SIPs are due July 12, 2018), maintenance obligations, and that monitors have been deployed at Big Brown and Martin Lake. They also reiterate their positions on our reliance on modeling vs. monitor data and relying on Sierra Club modeling.

Message

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**Sent:** 2/23/2018 4:14:02 PM  
**Subject:** Texas sues EPA over sulfur dioxide designations/ Judge agrees to freeze litigation over Texas nonattainment + D.C. Circuit transfers Texas SO2 nonattainment suits to 5th Circuit

FYI - Through the weblinks in this 2/21/17 news article, I found copies of the TX DC & 5<sup>th</sup> circuit petitions. OGC likely has the: "official" versions.

DC Circuit

[https://insideepa.com/sites/insideepa.com/files/documents/feb2017/epa2017\\_0367.pdf](https://insideepa.com/sites/insideepa.com/files/documents/feb2017/epa2017_0367.pdf)

5<sup>th</sup> Circuit

[https://insideepa.com/sites/insideepa.com/files/documents/feb2017/epa2017\\_0367a.pdf](https://insideepa.com/sites/insideepa.com/files/documents/feb2017/epa2017_0367a.pdf) (same weblink as above)

## D.C. Circuit transfers Texas SO2 nonattainment suits to 5th Circuit

November 03, 2017

The U.S. Court of Appeals for the District of Columbia Circuit has agreed to transfer to the 5th Circuit lawsuits filed by Texas and utilities contesting Obama-era EPA designations of parts of the state as "nonattainment" for federal sulfur dioxide (SO2) standards, over the objections of the Trump EPA that sought to keep the suits in the D.C. Circuit.

The court granted the transfer in [a Nov. 2 order](#) that also resolves several other pending requests in consolidated litigation in the D.C. Circuit over the SO2 findings in Texas and other states. For example -- agreeing to sever and postpone a challenge to some Missouri attainment designations but rejecting similar requests for challenges to designations for other states. The designations are key because they help determine the stringency of states' emissions reduction plans for coming into attainment with the SO2 national ambient air quality standard.

Texas and utility Luminant are already suing EPA over the designations for that state in the 5th Circuit suit *State of Texas v. EPA*, arguing that venue is proper in the regional court because the Texas designations are separate from others at issue in the D.C. Circuit litigation, *Samuel Masias, et al. v. EPA, et al.* Texas, which believes the nonattainment designations are unwarranted, argues that they are "regionally applicable," but EPA has argued they are of "nationwide scope or effect" and hence can only be challenged in the D.C. Circuit.

Some legal observers say that Texas may get a more sympathetic audience in [the 5th Circuit](#) than in the D.C. Circuit, and the D.C. Circuit's order now shifts the fight over the Lone Star state designations to the regional circuit, over EPA's objections. The 5th Circuit is already proceeding to consider the merits of Texas' case.

The court in the order also grants EPA's motion to sever and hold in abeyance Sierra Club's challenge to the agency's "unclassifiable" designation for portions of Franklin and St Charles Counties, MO.

But the order denies EPA's motion to sever and hold in abeyance Sierra Club's challenge to the "unclassifiable" designation of portions of Gallia County, OH. EPA says it is reviewing those designations based on environmentalists' petitions for administrative reconsideration.

EPA is reconsidering the nonattainment designation of Williamson County, IL, and further to the agency's motion, the court severs suits brought against the designation by the Southern Illinois Power Cooperative and holds them in abeyance pending reconsideration.

For the remaining designations at issue in *Samuel Masias*, the court sets a briefing schedule, requiring opening briefs from petitioners Nov. 27, EPA's response brief Feb. 12, and final briefs May 16.

**From:** Casso, Ruben

**Sent:** Thursday, June 28, 2018 8:14 AM

**To:** Casso, Ruben <[Casso.Ruben@epa.gov](mailto:Casso.Ruben@epa.gov)>

**Subject:** February 21, 2017 - Texas sues EPA over SO2 nonattainment designations - Inside EPA

## **AIR POLLUTION: Judge agrees to freeze litigation over Texas nonattainment**

Sean Reilly, E&E News reporter

Published: Friday, October 13, 2017

A federal judge has agreed to U.S. EPA's request to stay litigation challenging its decision to declare three parts of East Texas in nonattainment for its 2010 sulfur dioxide standard, even as the state's largest power producer intends to close at least two of the coal-fired plants responsible for the bulk of the pollution.

In an order yesterday, Judge Gregg Costa of the 5th U.S. Circuit Court of Appeals granted EPA's Oct. 2 motion to freeze legal proceeding while the agency reconsiders the nonattainment designations in response to a request from Vistra Energy.

Since Oct. 2, however, a Vistra subsidiary has signaled plans to shutter two of the three plants EPA blamed for pushing the nonattainment areas out of compliance with the 75-parts-per-billion sulfur dioxide standard.

Last week, Luminant Generation Co. LLC said it would close the almost 1,900-megawatt Monticello Power Plant in Titus County. That announcement was followed by another this morning to cease operations at the 1,150 MW Big Brown plant in Freestone County if a buyer can't be found.

In both cases, Luminant blamed market forces for the closures. While "the Big Brown team has made tremendous operational adjustments to remain viable," the company said in a news release today, economics "do not make it a sustainable option for our fleet."

The company has notified the Electric Reliability Council of Texas of its plans, triggering 60-day reviews of the potential ramifications for the reliability of the state's electric grid. The third plant is the 2,250-MW Martin Lake facility in Rusk and Panola counties. Asked today whether Luminant has made a decision on that plant's future, spokeswoman Meranda Cohn said in an email that the company had "nothing to report."

A spokeswoman for Texas Attorney General Ken Paxton (R), who brought one of the lawsuits challenging the nonattainment designations made late last year, had no immediate comment on whether the plant closings will affect the litigation.

While Vistra had asked EPA in February to administratively reconsider the nonattainment designations, agency chief Scott Pruitt replied only late last month (*E&E News PM*, Oct. 3). Cohn did not immediately reply when asked today whether Vistra had given EPA advance notice of its intent to close the Monticello and Big Brown plants.

The company today also announced plans to shutter its approximately 1,100-MW Sadow Power Plant in Milam County. EPA had deemed that area "unclassifiable" for the SO<sub>2</sub> standard.

The wave of plant shutdowns could also affect a separate legal battle over the scope of power industry pollution controls needed for Texas to meet EPA's regulations under its program to eliminate hazy conditions in national parks and wilderness areas.

Early this month, EPA proposed an intra-state emissions trading program to comply with the terms of the 2012 consent decree to a lawsuit brought by the National Parks Conservation Association and other environmental groups.

Those groups have already denounced the proposal as inadequate; they are scheduled to file their response in court today.

## The Daily Feed

### Texas sues EPA over SO<sub>2</sub> nonattainment designations

February 21, 2017

Texas is suing EPA over the agency's Obama-era classification of several areas of the state in "nonattainment" of the agency's 2010 sulfur dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS), seeking to avoid stringent regulation of air pollution sources in the state.

In its suit filed Feb. 13 in the U.S. Court of Appeals for the District of Columbia Circuit, Texas asks the court to review EPA's Dec. 13 rule placing three parts of the state in nonattainment with the agency's standard, set at 75 parts per billion (ppb) over one hour, and designating another as "unclassifiable."

Texas frequently clashed with the Obama EPA over what it says is the agency's overreach into states' affairs, filing numerous lawsuits over various agency rules and air quality plans for the state. With new EPA Administrator Scott Pruitt in office, a former Oklahoma attorney general who also sued EPA to assert states' rights, the relationship between EPA and the Lone Star State may now change, though it is unclear whether the Pruitt EPA will defend the Obama-era SO<sub>2</sub> designation rule.

In its initial filing, Texas gives no reason for the suit, but nonattainment status brings with it the requirement to impose often costly pollution control mandates on industry.

Texas has also filed suit in the 5th Circuit, but says it also filed in the D.C. Circuit because EPA in the rule argues it has "nationwide scope or effect," and hence must be heard in the D.C. Circuit.



However, "Jurisdiction and venue for this petition is proper in the Fifth Circuit Court of Appeals because the Final Rule is a 'locally or regionally applicable' final action of the EPA Administrator," Texas says in its filing. The 5th Circuit, based in New Orleans, is seen by some observers as more conservative and industry-friendly than the D.C. Circuit. EPA in rule says "it has concluded that dispersion modeling shows that three . . . areas in Texas (portions of Freestone and Anderson Counties, portions of Rusk and Panola Counties, and portions of Titus County) are not meeting the 1-hour primary SO<sub>2</sub> standard and we are, therefore, designating these areas as nonattainment."

EPA says it lacks sufficient data to classify Milam County, and therefore classifies the county "unclassifiable," a status that avoids pollution controls required for nonattainment zones, but falls short of the positive assurance provided by an attainment finding.

## **AIR POLLUTION: Texas sues EPA over sulfur dioxide designations**

Sean Reilly, E&E News reporter

Published: Monday, February 13, 2017

Texas Attorney General Ken Paxton (R) is challenging U.S. EPA's sulfur dioxide attainment designations for the state.

The designations, made final in December, require "expensive and excessive restrictions that will damage not only our economy, but the livelihood of citizens across the state with little to no effect on the environment," Paxton said in a news release this afternoon announcing the petitions for review filed Friday with the 5th U.S. Circuit Court of Appeals and the U.S. Court of Appeals for the District of Columbia Circuit.

In the designations, EPA declared that three areas of east Texas were out of compliance with the one-hour standard for sulfur dioxide of 75 parts billion. All three areas surround coal-fired power plants that EPA had identified as the primary local sources of sulfur dioxide emissions.

Assuming the designations withstand court review, Texas regulators will have 18 months to devise plans for bringing the areas into compliance, launching what could be a lengthy effort to meet the 75 ppb threshold.

**Sent:** 5/30/2018 3:13:59 PM

**Subject:** FYI: TX SO<sub>2</sub> -weblinks & Round 2 source excerpts from TCEQ 2017 & 2018 AMNPs & DRR submittals

**2017 AMNP Page 8:**

Table 2 also lists the three additional monitoring stations in areas designated nonattainment by the EPA, effective January 12, 2017. However, a request for reconsideration of all three SO<sub>2</sub> nonattainment designations was submitted to the EPA in February 2017. At this time, the **TCEQ intends to deploy monitoring stations near Big Brown Steam Electric Station, Monticello Steam Electric Station, and Martin Lake Electrical Station** based on the evaluation of monitoring locations outlined in Appendix E of this document. The proposed monitoring stations will include federal reference method (FRM) or federal equivalent method (FEM) monitors designated as special purpose monitors for determining compliance or progress towards compliance with the one-hour SO<sub>2</sub> standard in these nonattainment areas

**2018 AMNP page 11:**

The 2017 TCEQ AMNP recommended deploying monitors to characterize levels of SO<sub>2</sub> in areas designated nonattainment for the 2010 one-hour SO<sub>2</sub> NAAQS. In a letter dated August 10, 2017, the EPA concurred with the TCEQ's recommended site locations for these new monitors. The **TCEQ deployed SO<sub>2</sub> monitors near Big Brown Steam Electric Station at Fairfield FM 2570 Ward Ranch on October 30, 2017, and near Martin Lake Electrical Station at Tatum CR 2181d Martin Creek Lake on November 1, 2017, to determine compliance or progress towards compliance with the 2010 one-hour SO<sub>2</sub> primary standard in these nonattainment areas. No monitors were deployed in the area around Monticello Steam Electric Station, as the source was retired on February 8, 2018.**

**1/25/2016 TCEQ letter to EPA: Sulfur dioxide (SO<sub>2</sub>) sources identified for further evaluation and air quality characterization**

<https://www.epa.gov/sites/production/files/2016-06/documents/tx.pdf>

In developing the enclosed list of sources, the Texas Commission on Environmental Quality (TCEQ) reviewed the 2014 SO<sub>2</sub> emissions inventory data reported to the State of Texas Air Reporting System to identify those sources emitting 2,000 or more tpy of SO<sub>2</sub>. **The list includes 12 sources identified by the EPA's March 20, 2015 letter for designation by July 2, 2016. The EPA determined that these sources were subject to expedited area designations according to a March 2, 2015 court-ordered consent decree.**

[Texas Source Characterization Submittal \(PDF\)\(2 pp, 74 K\)](#)

[https://www.epa.gov/sites/production/files/2016-07/documents/texas\\_source\\_characterization.pdf](https://www.epa.gov/sites/production/files/2016-07/documents/texas_source_characterization.pdf)

**6/29/16 TCEQ to EPA: Air quality characterization plans for areas with identified SO<sub>2</sub> sources**

The list of 24 sources identified to the EPA for air quality characterization includes 12 sources for which the EPA proposed designations on February 11, 2016, consistent with a March 2, 2015 court-approved consent decree. While these 12 sources are subject to ongoing data requirements per the DRR, there is no need to provide any future air quality characterization plans in addition to those contained in the 2016 monitoring plan, because the EPA is required to designate these 12 sources for the 2010 SO<sub>2</sub> NAAQS by July 2, 2016. However, should the EPA designate any of the 12 sources as unclassifiable (rather than attainment, nonattainment, or unclassifiable/attainment), the TCEQ intends to characterize those sources through monitoring. Accordingly, this plan may need to be revised by the TCEQ since the court-ordered deadline for final designations of these 12 sources falls after this letter is due.

**Sent:** 1/23/2018 3:38:57 PM  
**Subject:** relevant facilities, their operating status SO2 designations and air monitoring

Current Status:

The following table summarizes the relevant facilities, their operating status and the SO<sub>2</sub> designations:

Area	SO <sub>2</sub> Designation	Relevant Facility	Operating Status	Monitor
Titus County (p)	Nonattainment	Monticello	Shut Down 1/4/18.	No monitor
Milam County	Unclassifiable	Sadow	Shut down 1/11/18.	DRR monitor Activation date 11/19/2016
Freestone (p) and Anderson (p) Counties	Nonattainment	Big Brown	Scheduled to shut down on 2/12/18.	SPM monitor Activation date 10/30/2017
Rusk (p) and Panola (p) Counties	Nonattainment	Martin Lake	Expected to continue operation.	SPM Monitor Activation date 2017

*Petition Update:* We received a new petition from TCEQ dated 12/11/17 to provide new information for the areas around Big Brown and Monticello designated non-attainment. In the petition, TCEQ notes the shutdowns, the resources that would be needed for a redesignation request and maintenance SIP if EPA does not redesignate these areas now (attainment demonstration SIPs are due July 12, 2018), maintenance obligations, and that monitors have been deployed at Big Brown and Martin Lake. They also reiterate their positions on our reliance on modeling vs. monitor data and relying on Sierra Club modeling.

**Sent:** 7/24/2018 6:37:44 PM  
**Subject:** FW: FYI on TX SO<sub>2</sub>: weblinks & excerpts from TCEQ 2016, 2017 & 2018 Air Monitoring Network Plans & DRR submittals

TCEQ continued to express their desire to characterize air quality through air monitoring. The TCEQ 2017 annual air monitoring network plan, dated June 28, 2017, stated that the areas around the three relevant facilities were designated nonattainment by the EPA effective January 12, 2017. The 2017 network plan states: “However, a request for reconsideration of all three SO<sub>2</sub> nonattainment designations was submitted to the EPA in February 2017. At this time, the TCEQ intends to deploy monitoring stations near Big Brown Steam Electric Station, Monticello Steam Electric Station, and Martin Lake Electrical Station based on the evaluation of monitoring locations outlined in Appendix E of this document. The proposed monitoring stations will include federal reference method (FRM) or federal equivalent method (FEM) monitors designated as special purpose monitors for determining compliance or progress towards compliance with the one-hour SO<sub>2</sub> standard in these nonattainment areas.”

In 2018, TCEQ reiterated their desire to characterize air quality for SO<sub>2</sub> through air monitoring. The 2018 TCEQ annual air monitoring network plan, dated June 29, 2018, states: The 2017 TCEQ AMNP recommended deploying monitors to characterize levels of SO<sub>2</sub> in areas designated nonattainment for the 2010 one-hour SO<sub>2</sub> NAAQS. In a letter dated August 10, 2017, the EPA concurred with the TCEQ’s recommended site locations for these new monitors. The TCEQ deployed SO<sub>2</sub> monitors near Big Brown Steam Electric Station at Fairfield FM 2570 Ward Ranch on October 30, 2017, and near Martin Lake Electrical Station at Tatum CR 2181d Martin Creek Lake on November 1, 2017, to determine compliance or progress towards compliance with the 2010 one-hour SO<sub>2</sub> primary standard in these nonattainment areas. No monitors were deployed in the area around Monticello Steam Electric Station, as the source was retired on February 8, 2018.”

#### **6/29/18 2018 TX Air Monitoring Network Plan**

##### **Page 11:**

The 2017 TCEQ AMNP recommended deploying monitors to characterize levels of SO<sub>2</sub> in areas designated nonattainment for the 2010 one-hour SO<sub>2</sub> NAAQS. In a letter dated August 10, 2017, the EPA concurred with the TCEQ’s recommended site locations for these new monitors. The **TCEQ deployed SO<sub>2</sub> monitors near Big Brown Steam Electric Station at Fairfield FM 2570 Ward Ranch on October 30, 2017, and near Martin Lake Electrical Station at Tatum CR 2181d Martin Creek Lake on November 1, 2017, to determine compliance or progress towards compliance with the 2010 one-hour SO<sub>2</sub> primary standard in these nonattainment areas. No monitors were deployed in the area around Monticello Steam Electric Station, as the source was retired on February 8, 2018.**

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**From:** Casso, Ruben  
**Sent:** Tuesday, July 17, 2018 10:26 AM  
**To:** Olszewski, Joshua <olszewski.joshua@epa.gov>  
**Subject:** FYI on TX SO<sub>2</sub>: weblinks & excerpts from TCEQ 2016, 2017 & 2018 Air Monitoring Network Plans & DRR submittals

In addition to comments on the draft TX SO<sub>2</sub> FRN, I sent this info to Liz & Andrea, so they could see what TX said in DRR & monitoring network plans.

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**From:** Casso, Ruben

**Sent:** Thursday, July 12, 2018 12:15 PM

**To:** Etchells, Elizabeth <Etchells.Elizabeth@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>

**Subject:** FYI on TX SO2: weblinks & excerpts from TCEQ 2016, 2017 & 2018 Air Monitoring Network Plans & DRR submittals

I compiled this list of 2016-2018 communications from TX on SO2 monitoring contained in DRR submittals & air monitoring network plans. The incoming petitions may said more. -Ruben

**1/15/2016 TCEQ letter to EPA: Sulfur dioxide (SO2) sources identified for further evaluation and air quality characterization**

<https://www.epa.gov/sites/production/files/2016-06/documents/tx.pdf>

In developing the enclosed list of sources, the Texas Commission on Environmental Quality (TCEQ) reviewed the 2014 SO2 emissions inventory data reported to the State of Texas Air Reporting System to identify those sources emitting 2,000 or more tpy of SO2. **The list includes 12 sources identified by the EPA's March 20, 2015 letter for designation by July 2, 2016. The EPA determined that these sources were subject to expedited area designations according to a March 2, 2015 court-ordered consent decree.**

**6/29/16 Texas Source Characterization Submittal (PDF)(2 pp, 74 K)**

[https://www.epa.gov/sites/production/files/2016-07/documents/texas\\_source\\_characterization.pdf](https://www.epa.gov/sites/production/files/2016-07/documents/texas_source_characterization.pdf)

**6/29/16 TCEQ to EPA: Air quality characterization plans for areas with identified SO2 sources**

**Page 2**

The list of 24 sources identified to the EPA for air quality characterization includes 12 sources for which the EPA proposed designations on February 11, 2016, consistent with a March 2, 2015 court-approved consent decree. While these 12 sources are subject to ongoing data requirements per the DRR, there is no need to provide any future air quality characterization plans in addition to those contained in the 2016 monitoring plan, because the EPA is required to designate these 12 sources for the 2010 SO<sub>2</sub> NAAQS by July 2, 2016. However, should the EPA designate any of the 12 sources as unclassifiable (rather than attainment, nonattainment, or unclassifiable/attainment), the TCEQ intends to characterize those sources through monitoring. Accordingly, this plan may need to be revised by the TCEQ since the court-ordered deadline for final designations of these 12 sources falls after this letter is due.

**6/29/2016 Air Monitoring Network Plan**

<https://www.epa.gov/amtic/texas-2016-annual-network-plan>

**Page 7**

**Changes to the Regulatory SO<sub>2</sub> Monitoring Network**

On January 15, 2016, the TCEQ provided the EPA with a list of 25 SO<sub>2</sub> sources meeting the DRR emissions applicability threshold. Based on the need to characterize air quality for the purposes of making area designations, the TCEQ will deploy source-oriented SO<sub>2</sub> monitors near 13 sources by the January 1, 2017, rule deadline. Due to the close geographical proximity of 4 out of the 13 sources, a total of 11 monitoring stations, listed

in Table 2, are proposed for deployment to characterize ambient air quality surrounding each of these sources. The EPA is expected to finalize area designations for the remaining 12 sources by July 2, 2016. **The TCEQ will pursue monitoring station locations as expeditiously as practical for any of the 12 remaining sources designated as nonattainment under the EPA's final action.**

#### 6/28/17 2017 TX Air Monitoring Network Plan

<https://www.epa.gov/amtic/texas-2017-annual-network-plan>

#### **Page 8:**

Table 2 also lists the three additional monitoring stations in areas designated nonattainment by the EPA, effective January 12, 2017. However, a request for reconsideration of all three SO<sub>2</sub> nonattainment designations was submitted to the EPA in February 2017. At this time, the **TCEQ intends to deploy monitoring stations near Big Brown Steam Electric Station, Monticello Steam Electric Station, and Martin Lake Electrical Station** based on the evaluation of monitoring locations outlined in Appendix E of this document. The proposed monitoring stations will include federal reference method (FRM) or federal equivalent method (FEM) monitors designated as special purpose monitors for determining compliance or progress towards compliance with the one-hour SO<sub>2</sub> standard in these nonattainment areas

#### 6/29/18 2018 TX Air Monitoring Network Plan

#### **Page 11:**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

STATE OF TEXAS, et al.,

Petitioners,

v.

UNITED STATES  
ENVIRONMENTAL  
PROTECTION AGENCY, et al.,

Respondents.

No. 17-60088  
(and consolidated cases)

**STATUS REPORT**

Respondents the United States Environmental Protection Agency, et al. (“EPA”), respectfully submit this Status Report pursuant to the Court’s Order of October 12, 2017 (ECF Doc. #00514194243).

The status of this case is as follows:

1. On February 13, 2017, Petitioners filed these consolidated challenges to EPA’s final action entitled: “Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County.” 81 Fed. Reg. 89,870 (Dec. 13, 2016) (“Supplemental Rule”).

2. Also on February 13, 2017, Vistra Energy Corporation (corporate parent of Petitioner Luminant) submitted a petition for administrative reconsideration and administrative stay to the then-Acting Administrator of EPA. *See* Ex. 1 to EPA’s Motion to Hold Proceedings in Abeyance (Doc. # 00514179751). The administrative petition requested that EPA reconsider and immediately stay the effective date of the Supplemental Rule for the three areas in Texas designated as nonattainment for the 2010 SO<sub>2</sub> Primary National Ambient Air Quality Standard. *See id.* at 1.

3. On September 21, 2017, then-Administrator Pruitt responded by letter to that administrative petition. The Administrator explained that EPA intends “to undertake an administrative action with notice and comment to revisit” the three nonattainment designations. *Id.* at 1. The Administrator noted that, in the interim, the nonattainment designations remain effective. *Id.* The Administrator also explained that “EPA is considering a variety of administrative options for revisiting [the nonattainment designations], some of which may alleviate associated and pending planning obligations.” *Id.* EPA’s intent, the Administrator continued, is “to provide clarity regarding any



potential changes before [Texas or Luminant] expend resources investing in regulatory obligations that are currently required.” *Id.* The Administrator closed by inviting continued dialogue with Texas and Luminant. *Id.* at 1-2.

4. Based on these developments, EPA asked this Court to hold these consolidated challenges to the Supplemental Rule in abeyance pending the outcome of EPA’s administrative proceedings and to order the Agency to file status reports every 90 days thereafter. The Court issued an order to that effect on October 12, 2017.

5. On November 2, 2017, the D.C. Circuit transferred petitions for review of the Supplemental Rule filed in that Court by the State of Texas, industry challengers, and the Sierra Club to this Court. Order, No. 16-1314, Doc. #1702751 (D.C. Cir.). This Court then consolidated those petitions with the above-captioned cases. No. 17-60088, Docs. ##00514242669, 00514242712, and 00514242730 (Nov. 17, 2017).

6. On December 11, 2017, the State of Texas petitioned EPA to reconsider the designations of the three areas designated as nonattainment based, in part, on new information. *See* Ex. 1 to EPA’s April 12, 2018 Status Report (Doc. #00514427585).

7. Since the Court's October 2017 Order, EPA has continued to evaluate the administrative options for revisiting the three nonattainment designations made in the Supplemental Rule, including consideration of Texas' December 2017 reconsideration petition and other new information regarding the status of certain permits at the source(s) in at least one of the areas. In the Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions, EPA again confirmed its intent to publish a proposed action that will initiate a notice and comment process to revisit these areas.<sup>1</sup>

8. On November 5, 2018, EPA submitted a Supplemental Status Report pursuant to the Court's Order of October 22, 2018 (ECF Doc. #00514691531). EPA stated that it continues to work as expeditiously as possible on that proposal, and that it intended to sign the notice of proposed action within 60 days of that filing.

9. EPA has continued to work as expeditiously as possible on that proposal. However, in light of the intervening government shutdown, EPA is no longer able to complete the actions necessary to

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<sup>1</sup> That agenda item is available here: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=2060-AU15>.

finalize and ensure signature of the notice of proposed action by the anticipated date. Once EPA resumes normal operations, EPA intends to continue to work expeditiously to finalize the proposal.

10. Given the above, the Agency continues to believe that this case should remain in abeyance pending the conclusion of administrative proceedings addressing the Supplemental Rule. EPA will notify the Court once it has signed the notice of proposed action. Additionally, consistent with the Court's October 12, 2017 Order, EPA will file an updated status report in ninety days, unless the Agency's administrative proceedings conclude earlier.

Respectfully submitted,

/s/ Amanda Shafer Berman  
AMANDA SHAFER BERMAN  
U.S. Department of Justice  
Environment & Nat'l Res. Div.  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
(202) 514-1950

DATED: January 4, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of said filing to the attorneys of record, who are required to have registered with the Court's CM/ECF system.

Date: January 4, 2018

/s/ Amanda Shafer Berman  
AMANDA SHAFER BERMAN

*Counsel for Respondent EPA*

**CERTIFICATE OF COMPLIANCE  
WITH TYPE-VOLUME LIMITS**

I hereby certify that the foregoing Status Report is proportionately spaced, has a typeface of 14 points, and contains 732 words, exclusive of those parts exempted by Federal Rule of Appellate Procedure 32(f). I have relied on Microsoft Word's calculation feature.

Date: January 4, 2018

/s/ Amanda Shafer Berman  
AMANDA SHAFER BERMAN

*Counsel for Respondent EPA*

Message

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**From:** Etchells, Elizabeth [Etchells.Elizabeth@epa.gov]  
**Sent:** 4/24/2018 7:15:26 PM  
**To:** Mathias, Scott [Mathias.Scott@epa.gov]; Jones, Rhea [Jones.Rhea@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Carrillo, Andrea [Carrillo.Andrea@epa.gov]; Casso, Ruben [Casso.Ruben@epa.gov]; Snyder, Erik [snyder.erik@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Feldman, Michael [Feldman.Michael@epa.gov]; Hawes, Todd [Hawes.Todd@epa.gov]  
**CC:** Long, Pam [Long.Pam@epa.gov]  
**Subject:** Petition for Reconsideration from TCEQ  
**Attachments:** TCEQ\_Reconsideration\_Comment.pdf

Hi All,

While in the Round 2 docket, I stumbled across a docket submission from TCEQ submitting a Dec. 11, 2017 Petition for Reconsideration.

In the normal course of events, we would receive petitions for reconsideration through CMS so we could acknowledge and respond. Lately, things have not been entered into CMS, so we are not seeing them in a timely manner.

Attaching now for everyone's information.

Thanks,  
Liz

Liz Etchells | USEPA | OAQPS|AQPD/Geographic Strategies|Phone (919) 541-0253

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 11, 2017

**VIA ELECTRONIC TRANSMISSION AND HARD COPY**

**Pruitt.scott@epa.gov**

**Certified Mail No. 7015 0640 0006 9895 9362**

The Honorable Scott Pruitt, Administrator  
United States Environmental Protection Agency  
William Jefferson Clinton Building  
MC-1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Subject or Re line

Re: Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, 81 Federal Register 89,870, Dec. 13, 2016, (Final Rule); EPA Docket Number EPA-HQ-OAR-2014-0464

Dear Administrator Pruitt:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to submit the attached Petition for Reconsideration of the Final Rule in the above referenced matter.

Please accept the attached document for filing and confirm receipt. If you have any questions, please contact me at (512) 239-1317 or John Minter, Staff Attorney, at (512) 239-0663.

Sincerely,

A handwritten signature in black ink, appearing to read "R. A. Hyde".

Richard A. Hyde, P.E.  
Executive Director

Enclosure

Cc: Bryan W. Shaw, PhD., P.E., TCEQ Chairman  
Toby Baker, TCEQ Commissioner  
Jon Niermann, TCEQ Commissioner  
Steve Hagle, P.E. TCEQ Deputy Director, Office of Air  
Margaret Ligarde, TCEQ Deputy Director, Office of Legal Services  
John Minter, TCEQ Staff Attorney Environmental Law Division  
Craig Pritzlaff, Office of Attorney General, Environmental Protection Division  
Wren Stenger, Director, Multimedia Division, U.S. EPA, Region 6  
Suzanne Smith, Office of Regional Counsel, U.S. EPA Region 6

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

<b>In Re: Petition for Reconsideration—Air</b>	<b>§</b>	<b>Docket No.</b>
<b>Quality Designations for the 2010 Sulfur</b>	<b>§</b>	<b>EPA-HQ-OAR-2014-0464</b>
<b>Dioxide (SO<sub>2</sub>) Primary National Ambient</b>	<b>§</b>	
<b>Air Quality Standard for Four Areas in</b>	<b>§</b>	
<b>Texas: Freestone and Anderson Counties,</b>	<b>§</b>	
<b>Milam County, Rusk and Panola Counties,</b>	<b>§</b>	
<b>and Titus County, 81 Fed. Reg. 89,870.</b>	<b>§</b>	

**Final Rule**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY'S  
PETITION FOR RECONSIDERATION**

Pursuant to 42 U.S.C. § 7607(d)(7)(B), the Texas Commission on Environmental Quality (TCEQ) respectfully submits this Petition for Reconsideration, urging the Environmental Protection Agency (EPA) to reconsider its final rule of the *Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County*, captioned above and published at 81 Federal Register 89,870 (Dec. 13, 2016) (Final Rule).

**Introduction and Background**

The Final Rule rejects the State of Texas's recommended designations for three areas in Texas for the 2010 1-hour SO<sub>2</sub> national ambient air quality standard ("NAAQS"). Specifically, EPA's Final Rule designates three areas in Texas as nonattainment (Freestone and Anderson Counties; Rusk and Panola Counties; and Titus county) and one area as unclassifiable.<sup>1</sup> The three areas designated by EPA as nonattainment surround Luminant's<sup>2</sup> Big Brown Power Plant, Martin Lake Power Plant, and Monticello Power Plant, respectively. EPA's designations are contrary to the attainment/unclassifiable designations recommended by the TCEQ. Luminant submitted to EPA extensive comments and documentation on

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<sup>1</sup> 81 Fed. Reg. at 89,870.

<sup>2</sup> Luminant is owner and operator of the power plants, Big Brown Steam Electric Station, Martin Lake Electrical Station, and Monticello Steam Electric Station; Luminant is a subsidiary of Vistra Energy Corporation.

the proposed rule in support of TCEQ's recommended designations.<sup>3</sup> Nevertheless, EPA ignored TCEQ's recommendation that the areas be designated 'unclassifiable' per the federal Clean Air Act, due to the lack of monitored data characterizing the air quality.<sup>4</sup> EPA simply adopted suggested designations by the Sierra Club based solely on modeling simulations submitted by the Sierra Club.

TCEQ requested the EPA Administrator administratively stay the effective date of the Texas Final Rule so that appeals pending in the 9<sup>th</sup> Circuit Court of Appeals, challenging the basis of the SO<sub>2</sub> designation process, could be concluded. TCEQ argued that if not stayed, Texas would be unjustifiably forced to expend significant resources to meet the 18-month SIP deadline.<sup>5</sup> Vistra Energy Corporation (Luminant's parent company) also petitioned the EPA Administrator to reconsider and stay the Texas Final Rule.<sup>6</sup> As explained in Vistra's petition, reconsideration is necessary so that the final designations may be based on SO<sub>2</sub> monitoring data collected by the TCEQ, and not solely on Sierra Club's over-predictive modeling simulations.

The State of Texas (on behalf of TCEQ), and Vistra filed petitions for review of the Final Rule in the 5<sup>th</sup> Circuit Court of Appeals challenging the designations.<sup>7</sup> Although protective petitions were filed in the D.C. Court of Appeals, these cases have been transferred to the 5<sup>th</sup> Circuit.

By letter dated September 21, 2017, Administrator Pruitt responded to the petition for reconsideration and administrative stay submitted by Vistra (attached as Exhibit 2). As stated in its response, EPA intends to undertake an administrative action with notice and comment to revisit the nonattainment designations in the Final Rule for portions of Freestone and Anderson Counties, Rusk and Panola Counties, and Titus County, Texas. This letter also stated EPA

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<sup>3</sup> Comments of Luminant dated March 31, 2016, on EPA Responses to Certain State Designation Recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standard: Notice of Availability and Public Comment Period, Docket no. EPA-HQ-OAR-2014-0464, 81 Fed. Reg. 10563, (March 1, 2016).

<sup>4</sup> 42 U.S.C. § 7407(d)(1)(A)(iii); CAA § 107(d)(1)(A)(iii).

<sup>5</sup> Letter to Scott Pruitt, Administrator from Richard Hyde, Executive Director, March 15, 2017.

<sup>6</sup> Letter to Catharine McCabe, Acting Administrator from Daniel Jude Kelly, Vistra Energy Corporation, February 13, 2017 re: petition for reconsideration and administrative stay submitted by Vistra Energy Corporation, Luminant Generation Company LLC ("Luminant"), and other Vistra subsidiaries regarding the U.S. Environmental Protection Agency's ("EPA") final action entitled *Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County* ("Final Rule"), published at 81 Fed. Reg. 89,870 (Dec. 13, 2016).

<sup>7</sup> *State of Texas et al. v. EPA et al.*, No. 17-60088 (5th Cir.).



is considering a variety of administrative options for revisiting the designations, which may alleviate state planning obligations.

TCEQ files this petition for reconsideration of the Final Rule to provide new information that necessitates prompt EPA action to reconsider the Final Rule and to redesignate these three areas in Texas.

### **Standard of Review**

TCEQ requests that EPA reconsider the Final Rule pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 553(e), or, in the alternative, under the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B). Under the APA, “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.”<sup>8</sup> And under the CAA, EPA must grant reconsideration of a final rule if it can be demonstrated that: (1) “it was impracticable to raise [an] objection within” the time allowed for public comment or “if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review)”; and (2) the “objection is of central relevance[.]”<sup>9</sup>

There are numerous examples of EPA granting requests for reconsideration submitted after a final rule becomes effective, as in this case. For example, by a January 26, 2009 directive of the incoming Obama Administration regarding the review of new and pending regulations, the EPA Administrator reviewed a number of actions taken by the previous administration in its final year. On March 10, 2009, EPA used its discretion to grant reconsideration of the March 27, 2008 final rule for the NAAQS for ozone<sup>10</sup> when it filed its unopposed motion requesting that the D.C. Circuit Court vacate the briefing schedule and hold the cases challenging the rule in abeyance. The basis for EPA's action was its desire to allow time for appropriate officials from the new administration to review the standards to determine whether they should be maintained, modified or otherwise reconsidered. This 2009 reconsideration was granted more than two years after the final ozone standard rule was proposed, and about one year after the final rule was published. In response to the reconsideration, EPA's proposal was published in January 2010.<sup>11</sup>

In addition, on January 14, 2009, EPA denied the State of New Jersey's petition for reconsideration regarding the New Source Review (NSR) Recordkeeping

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<sup>8</sup> 5 U.S.C. § 553(e).

<sup>9</sup> 42 U.S.C. § 7607(d)(7)(B).

<sup>10</sup> Docket No. EPA-HQ-OAR-2005-0172.

<sup>11</sup> 75 Fed. Reg. 2938 (Jan. 19, 2010).

Rule<sup>12</sup> submitted February 15, 2008 (56 days after publication of the final rule). Two months later, on March 11, 2009, New Jersey submitted a second petition containing identical grounds as were included in the initial petition more than one year earlier. EPA granted it within three months on April 24, 2009 -- a full 16 months after the final rule was published. Again, EPA filed its unopposed motion requesting that the D.C. Circuit Court hold the case in abeyance pending EPA proceedings.

A third example is the EPA's denial of a petition on January 14, 2009 submitted by EarthJustice regarding EPA's rule for implementation of NSR for the NAAQS for particulate matter (PM<sub>2.5</sub>) published May 16, 2008.<sup>13</sup> EarthJustice filed its second petition with EPA 27 days later on February 10, 2009, which EPA granted on April 24, 2009, together with a stay pending reconsideration. The accompanying litigation was held in abeyance.

These examples of Petitions for Reconsideration granted by EPA, together with the authority granted by the APA and CAA, provide precedent for EPA granting a Petition for Reconsideration long after the effective date of the rulemaking. And, coupled with the demonstration below that that it was impossible for TCEQ to raise certain objections of central relevance to the outcome of the Final Rule during the comment period, mandate that EPA has a duty to grant TCEQ's petition for reconsideration.<sup>14</sup>

### **Grounds for Reconsideration**

Prompt reconsideration of the Final Rule and EPA redesignation is necessary for the following reasons.

#### **I.     **Vistra recently announced the closings for Monticello and Big Brown, the primary sources of SO<sub>2</sub> emissions in their respective nonattainment areas****

On October 6, 2017, Vistra's subsidiary Luminant announced the retirement of the Monticello power plant, located in Titus County by January 4, 2018. One week later, Luminant announced the closure of the Big Brown power plant in Freestone County by February 12, 2018. The announcements were made well past the close of comment on or publication of the Final Rule. As Vistra noted in its media announcements, the decision to retire these units was based on

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<sup>12</sup> Docket No. EPA-HQ-OAR-2001-0004 (Dec. 21, 2007).

<sup>13</sup> Docket NO. EPA-HQ-OAR-2003-0062.

<sup>14</sup> See *North Carolina v. EPA*, 531 F.3d 896, 927 (D.C. Cir 2008).

economic challenges and completely unrelated to the Final Rule; and could not have been known to or anticipated by, TCEQ.

Both plants were identified by EPA as the major SO<sub>2</sub> sources causing modeled nonattainment of the SO<sub>2</sub> NAAQS in those areas of the state. The Electric Reliability Council of Texas (ERCOT) issued final determinations that Monticello and Big Brown are not required for reliability must run service. This action by ERCOT provides the necessary clearance for Luminant to retire the four electric generating units at these plants. With the closure of these plants early next year, the majority (if not all) of the SO<sub>2</sub> emissions in the areas designated in the Final Rule as nonattainment will be eliminated. Therefore, the basis of the Final Rule's determinations for portions of Titus County, and Freestone and Anderson County will no longer exist.

## **II. Failure to Redesignate will force TCEQ and EPA to unnecessarily expend limited resources to develop State Implementation Plans**

The deadline for submittal of attainment demonstrations SIPs for the three nonattainment areas is July 12, 2018. The September 21, 2017 letter to Vistra stated the designations announced in December 2016 remain effective but that EPA is exploring several options that may alleviate the associated and pending planning obligations, i.e. changing the nonattainment status of the three Texas areas. However, these planning obligations are significant and remain ongoing. Absent immediate action to reconsider and redesignate the Texas SO<sub>2</sub> nonattainment areas, TCEQ will unnecessarily expend significant time and resources to develop plans which includes emission inventories, modeling, control strategies, and contingency measures. With the closure of Big Brown and Monticello, the major sources of SO<sub>2</sub> emissions in their respective areas, there is no further reason to maintain the nonattainment moniker for these areas. If the current nonattainment designations remain, Texas must submit requests to redesignate to attainment and maintenance plans for the Monticello and Big Brown areas.<sup>15</sup> A redesignation prior to the SIP deadline avoids expenditure of time and resources for Texas to develop redesignation requests and a maintenance plan or for EPA to expend its limited resources reviewing the Texas plans and redesignating those areas. Even if a redesignation is granted after a state request is submitted, the maintenance obligations continue for 20 years for areas with no foreseeable SO<sub>2</sub> emissions. In the interest of administrative economy, it makes sense for EPA to redesignate these areas now, before the planning requirements are triggered.

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<sup>15</sup> 42.U.S.C. §§ 7407(d)(3); 7505a.

### **III. TCEQ monitors are in place and collecting data**

As explained in the 2017 Annual Monitoring Network Plan (AMNP), TCEQ announced plans to deploy additional SO<sub>2</sub> monitors near the Martin Lake, Big Brown and Monticello power plants in light of the Final Rule's nonattainment designations.<sup>16</sup> As explained in Appendix E of the AMNP, these monitors were being deployed based on extensive evaluation of several potential monitor locations near the power plants. In two of the areas, monitors have been activated and are now operational. The monitor for the Martin Lake Plant (CAMS 1082) is located approximately 2.2 kilometers downwind of the plant to the north based on predominant wind direction, and the monitor for the Big Brown Plant (CAMS 1084) is located approximately 5.2 kilometers to the southwest of that plant.

The shortcomings identified in the Sierra Club modeling EPA relied upon for the nonattainment designations warrant a reconsideration of the Final Rule to provide time to collect actual, verifiable air quality data on the attainment status of this area. Texas's position on the use of monitoring or modeling for designation purposes has been consistent and clear. Actual monitored air quality data of the airshed of concern is the only reliable data for making designation determinations. Given the absence of such data at the present time, the areas should be designed as unclassifiable. After the data from the monitors is collected, quality assured and submitted to EPA, your agency has at its disposal a redesignation process to change the status of the area(s) based on that real data, if necessary.<sup>17</sup>

### **IV. It was improper for EPA to rely exclusively on Sierra Club's modeling for designation decisions**

EPA relied exclusively on modeling of emissions from the Luminant plants submitted by Sierra Club in order to make the three nonattainment designations in Texas. As EPA admitted in the Final Rule and Technical Support Documents (TSD) it did so even though EPA did not agree with some of Sierra Club's assertions.<sup>18</sup> Specifically, EPA conceded that the modeling was not peer reviewed, used an old version of the model, and only generally meets the

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<sup>16</sup> Texas Commission on Environmental Quality Annual Network Monitoring Plan 2017, [https://www.tceq.texas.gov/assets/public/compliance/monops/air/annual\\_review/historical/2017-AMNP.pdf](https://www.tceq.texas.gov/assets/public/compliance/monops/air/annual_review/historical/2017-AMNP.pdf).

<sup>17</sup> 42 U.S.C. § 7407(d)(3)(A)-(C).

<sup>18</sup> EPA, Technical Support Document Texas, Area Designations for the 2010 SO<sub>2</sub> Primary National Ambient Air Quality Standard, Docket No. EPA-HQ-OAR-2014-0464-0434 (Nov. 29, 2016).

requirements of EPA's modeling guidance.<sup>19</sup> Prior to finalizing the nonattainment designations, Vistra submitted its own air quality modeling that in many ways contradicts the conclusions of Sierra Club's modeling as to these areas. Given EPA's own admission that the modeling it relied upon was deficient in many important respects, and it did not fully consider competing information, the logical conclusion is that the three nonattainment areas should be redesignated 'unclassifiable.' This statutory option is appropriate here, where an area "cannot be classified on the basis of available information."<sup>20</sup>

**V. Redesignation is clearly within EPA's authority and does not violate the terms of the *Sierra Club v. McCarthy* consent decree**

Finally, reconsideration and redesignation does not violate the terms of the consent decree. The agreement entered by the U.S. District Court for the Northern District of California required EPA to sign for publication certain area designations for the SO<sub>2</sub> NAAQS.<sup>21</sup> The signed proposed notice (published in the Federal Register on July 12, 2016<sup>22</sup>) fulfilled EPA's obligation under the consent decree for these three areas. The terms of the consent decree do not prohibit subsequent actions to reconsider those designations. In fact, with the shut-down and retirement of Big Brown and Monticello, the Freestone-Anderson County and Titus County areas do not contain stationary sources with emissions over the thresholds established in the consent decree that triggered designations in the first place.

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<sup>19</sup> EPA, Responses to Significant Comments on the Designation Recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standard (NAAQS) – Supplement for Four Areas in Texas Not Addressed in June 30, 2016 Version, Docket no. EPA-HQ-OAR-2014-0464-0438 (Nov. 29, 2016).

<sup>20</sup> 42 U.S.C. § 7407(d)(1)(A)(iii); CAA § 107(d)(1)(A)(iii).

<sup>21</sup> *Sierra Club v. McCarthy*, no. 3:13-cv-03953-SI, Consent Decree, ECF No. 163 (N.D. Cal.); March 2, 2015.

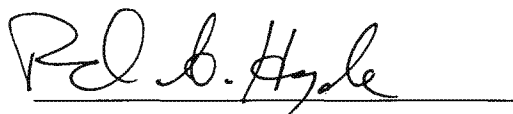
<sup>22</sup> 81 Fed. Reg. 45039; By stipulation, the plaintiffs and EPA agreed to a 60-day extension to the consent decree for EPA to sign a notice for areas in Texas and Oklahoma. EPA was given until July 2, 2016 to sign the notice.

### **Relief Requested**

For the forgoing reasons, TCEQ respectfully requests the Administrator promptly grant this Petition, initiate a proceeding for reconsideration of the issues raised in this Petition, and redesignate Freestone and Anderson Counties; Rusk and Panola Counties; and Titus County to attainment or unclassifiable/attainment of the 2010 SO<sub>2</sub> NAAQS.

December 11, 2017

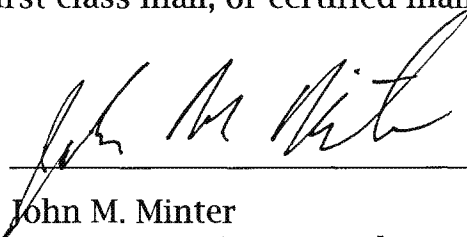
Respectfully Submitted,

A handwritten signature in black ink, appearing to read "R. A. Hyde", is written over a horizontal line.

Richard A. Hyde, P.E.  
Executive Director  
Texas Commission on  
Environmental Quality

**CERTIFICATE OF SERVICE**

I certify that a copy of the Texas Commission on Environmental Quality's Petition for Reconsideration was served on the following persons via hand delivery, facsimile, electronic mail, first class mail, or certified mail on December 11, 2017.



John M. Minter  
Attorney, Environmental Law Division  
Texas Commission on Environmental  
Quality  
Texas Bar # 24002613

Administrator Scott Pruitt  
United States Environmental Protection Agency  
William Jefferson Clinton Building  
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[Dustin.maghamfar@usdoj.gov](mailto:Dustin.maghamfar@usdoj.gov)



# **Exhibit 1**

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

In addition, this rulemaking determining that the Delaware County Area has attained the 2012 annual PM<sub>2.5</sub> NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This determination of attainment of the 2012 annual PM<sub>2.5</sub> NAAQS for the Delaware County nonattainment area may not be challenged later in

proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 22, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart NN—Pennsylvania**

- 2. In § 52.2059, add paragraph (u) to read as follows:

**§ 52.2059 Control strategy: Particulate matter.**

\* \* \* \* \*

(u) *Determination of attainment.* EPA has determined based on 2013 to 2015 ambient air quality monitoring data, that the Delaware County, Pennsylvania moderate nonattainment area has attained the 2012 annual fine particulate matter (PM<sub>2.5</sub>) primary national ambient air quality standard (NAAQS). This determination, in accordance with 40 CFR 51.1015, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning state implementation plan revisions related to attainment of the standard for as long as this area continues to meet the 2012 annual PM<sub>2.5</sub> NAAQS.

[FR Doc. 2016–29751 Filed 12–12–16; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA–HQ–OAR–2014–0464; FRL–9956–10–OAR]

**Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the initial air quality designations for four areas in Texas for the 2010 primary sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The Environmental Protection Agency (EPA) is designating three of the areas as nonattainment because they do not meet the NAAQS. One area is being designated unclassifiable because it cannot be classified on the basis of available information as meeting or not meeting the NAAQS. The designations are based on the weight of evidence for each area, including available air quality monitoring data and air quality modeling. For the areas designated nonattainment by this rule, the Clean Air Act (CAA) directs the state of Texas to undertake certain planning and pollution control activities to attain the SO<sub>2</sub> NAAQS as expeditiously as practicable. This action is a supplement to the final rule addressing the second round of area designations for the 2010 SO<sub>2</sub> NAAQS, which the EPA Administrator signed on June 30, 2016.

**DATES:** The effective date of this rule is January 12, 2017.

**ADDRESSES:** The EPA has established a docket for the second round of designations, including this supplemental action, under Docket ID No. EPA–HQ–OAR–2014–0464. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically in <http://www.regulations.gov>.

In addition, the EPA has established a Web site for the 2010 SO<sub>2</sub> NAAQS designations rulemakings at: <https://>

[www.epa.gov/sulfur-dioxide-designations](http://www.epa.gov/sulfur-dioxide-designations). The Web site includes the EPA's final SO<sub>2</sub> designations, as well as state and tribal initial recommendation letters, the EPA's letters announcing modifications to those recommendations, technical support documents, responses to comments and other related technical information.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this supplemental action, please contact Liz Etchells, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539-04, Research Triangle Park, NC 27711, telephone (919) 541-0253, email at [etchells.elizabeth@epa.gov](mailto:etchells.elizabeth@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*U.S. EPA Regional Office Contacts:* Region VI—Jim Grady, telephone (214) 665-6745, email at [grady.james@epa.gov](mailto:grady.james@epa.gov).

The public may inspect the rule and area-specific technical support information at the following location: Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202.

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**I. Preamble Glossary of Terms and Acronyms**

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act

CAA Clean Air Act

CFR Code of Federal Regulations

DC District of Columbia

EO Executive Order

EPA Environmental Protection Agency

FR Federal Register

NAAQS National Ambient Air Quality Standards

NTTAA National Technology Transfer and Advancement Act

OMB Office of Management and Budget

SO<sub>2</sub> Sulfur Dioxide

SO<sub>x</sub> Sulfur Oxides

RFA Regulatory Flexibility Act

UMRA Unfunded Mandate Reform Act of 1995

TAR Tribal Authority Rule

TAD Technical Assistance Document

TSD Technical Support Document

US United States

**II. What is the purpose of this supplemental action?**

The purpose of this final action is to announce and promulgate initial air quality designations for four areas in Texas for the 2010 primary SO<sub>2</sub> NAAQS, in accordance with the requirements of the CAA. The EPA is designating three of these areas as nonattainment, and one area as unclassifiable. As discussed in Section IV of this document, the EPA is designating areas for the 2010 SO<sub>2</sub> NAAQS in multiple rounds under a court-ordered schedule pursuant to a consent decree. The EPA completed the first round of SO<sub>2</sub> designations in an action signed by the Administrator on July 25, 2013 (78 FR 47191; August 5, 2013). In that action, the EPA designated 29 areas in 16 states as nonattainment, based on air quality monitoring data.

The court order required the EPA Administrator to sign a notice designating areas in a second round that contained sources meeting certain criteria no later than July 2, 2016. See *Sierra Club and NRDC v. McCarthy*, No. 3:13-cv-3953-SI (N.D. Cal.) (March 2, 2015). The four areas in Texas covered by this action met those criteria, and the EPA responded to state recommendations for Round 2

designations, including Texas' recommendations for these four areas, on February 11, 2016 (Letter from Ron Curry, EPA Region 6 Administrator, to Governor of Texas, Honorable Greg Abbott). In the second round of SO<sub>2</sub> designations signed on June 30, 2016, the EPA designated 61 areas in 24 states (including eight other areas in Texas): four nonattainment areas, 41 unclassifiable/attainment areas and 16 unclassifiable areas (81 FR 45039; July 12, 2016). However, by a series of stipulations of the parties in *Sierra Club and NRDC v. McCarthy* and orders of the Court, the deadline to promulgate designations was extended to November 29, 2016, for the four areas in Texas that are the subject of this supplemental action. This action to designate four Texas areas further discharges the EPA's duty to issue the second round of SO<sub>2</sub> designations, and uses the same administrative record as supported by the action signed on June 30, 2016, that addressed eight other Texas areas and other areas in the United States, as supplemented by additional materials further addressing these four Texas areas.

In this supplementary designation action, the list of areas being designated in Texas and the boundaries of each area appear in the tables within the regulatory text at the end of this notice. These designations are based on the EPA's technical assessment of and conclusions regarding the weight of evidence for each area, including but not limited to available air quality monitoring data or air quality modeling. With respect to air quality monitoring data, the EPA considered data from the most recent calendar years 2012–2015. In the modeling runs conducted by industry and members of the public, the air quality impacts of the actual emissions for the 3-year periods 2012–2014 or 2013–2015 were assessed.

For the areas being designated nonattainment, the CAA directs states to develop and submit to the EPA State Implementation Plans within 18 months of the effective date of this final rule that meet the requirements of sections 172(c) and 191–192 of the CAA and provide for attainment of the NAAQS as expeditiously as practicable, but not later than 5 years from the effective date of this final rule. We also note that under the EPA's SO<sub>2</sub> Data Requirements Rule in 40 CFR part 51, subpart BB (80 FR 51052; August 21, 2015), the EPA expects to receive additional air quality characterization for the one area in Milam County, Texas, designated unclassifiable in this action, and the agency will consider such data, as appropriate, in future actions.

### III. What is the 2010 SO<sub>2</sub> NAAQS and what are the health concerns that it addresses?

The Administrator signed a final rule revising the primary SO<sub>2</sub> NAAQS on June 2, 2010. The rule was published in the **Federal Register** on June 22, 2010 (75 FR 35520) and became effective on August 23, 2010. Based on the Administrator's review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by SO<sub>2</sub>, the EPA revised the primary SO<sub>2</sub> NAAQS to provide requisite protection of public health with an adequate margin of safety. Specifically, the EPA established a new 1-hour SO<sub>2</sub> standard at a level of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. 40 CFR 50.17(a)–(b). The EPA also established provisions to revoke both the existing 24-hour and annual primary SO<sub>2</sub> standards, subject to certain conditions. 40 CFR 50.4(e).

Additional information regarding the current scientific evidence on the health impacts of short-term exposures to SO<sub>2</sub> is provided in the **Federal Register** notice containing the final rule for the second round of SO<sub>2</sub> designations for other areas that was signed on June 30, 2016. See 81 FR 45041.

### IV. What are the CAA requirements for air quality designations and what action has the EPA taken to meet these requirements?

After the EPA promulgates a new or revised NAAQS, the EPA is required to designate all areas of the country as either “nonattainment,” “attainment,” or “unclassifiable,” for that NAAQS pursuant to section 107(d)(1) of the CAA. Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as “any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.” If an area meets either prong of this definition, then the EPA is obligated to designate the area as “nonattainment.” This provision also defines an attainment area as any area other than a nonattainment area that meets the NAAQS and an unclassifiable area as any area that cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

Additional information regarding the process for designating areas following

promulgation of a new or revised NAAQS pursuant to section 107(d) of the CAA and how the EPA is applying this process to the designation of areas under the 2010 SO<sub>2</sub> NAAQS is provided in the final rule addressing the second round of SO<sub>2</sub> designations for other areas signed on June 30, 2016. See 81 FR 45041. For this supplemental action, the EPA reiterates that CAA section 107(d) provides the agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (e.g., “contributes to” and “nearby”) for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA's position is that the statute does not require the agency to establish bright line tests or thresholds for what constitutes “contribution” or “nearby” for purposes of designations.<sup>1</sup>

Similarly, the EPA's position is that the statute permits the EPA to evaluate the appropriate application of the term “area” to include geographic areas based upon full or partial county boundaries, as may be appropriate for a particular NAAQS. For example, CAA section 107(d)(1)(B)(ii) explicitly provides that the EPA can make modifications to designation recommendations for an area “or portions thereof,” and under CAA section 107(d)(1)(B)(iv) a designation remains in effect for an area “or portion thereof” until the EPA redesignates it.

As explained in more detail in the final rule addressing the second round of SO<sub>2</sub> designations for other areas, the EPA completed the first round of SO<sub>2</sub> designations for 29 areas on July 25, 2013 (78 FR 47191), and intends to complete up to three more rounds of designations to address all remaining areas pursuant to a schedule contained in a consent decree and enforceable order entered by the U.S. District Court for the Northern District of California on March 2, 2015. See 81 FR 45042.

The court order specifies that in this second round of SO<sub>2</sub> designations the EPA must designate two groups of areas: (1) Areas that have newly monitored violations of the 2010 SO<sub>2</sub> NAAQS and (2) areas that contain any stationary sources that had not been announced as of March 2, 2015, for retirement and that, according to the EPA's Air Markets Database, emitted in 2012 either (i) more than 16,000 tons of SO<sub>2</sub>, or (ii) more than 2,600 tons of SO<sub>2</sub> with an annual

average emission rate of at least 0.45 pounds of SO<sub>2</sub> per one million British thermal units (lbs SO<sub>2</sub>/mmBTU).

On March 20, 2015, the EPA sent letters to Governors notifying them of the schedule for completing the remaining designations for the 2010 1-hour SO<sub>2</sub> NAAQS. The EPA offered states, including Texas, the opportunity to submit updated recommendations and supporting information for the EPA to consider for the affected areas. The EPA also notified states that the agency had updated its March 24, 2011, SO<sub>2</sub> designations guidance to support analysis of designations and boundaries for the next rounds of designations. All of the states, including Texas, with affected areas submitted updated designation recommendations.

In a letter dated February 11, 2016, the EPA notified Texas of its intended designation of twelve Round 2 areas, including the four areas in Texas addressed in this final notice, as either nonattainment, unclassifiable/attainment, or unclassifiable for the SO<sub>2</sub> NAAQS. Texas then had the opportunity to demonstrate why they believed the EPA's intended modification of their updated recommendations may be inappropriate. Although not required, as the EPA had done for the first round of SO<sub>2</sub> designations, the EPA also provided an opportunity for members of the public to comment on the EPA's February 2016 response letters. The EPA published a notice of availability and public comment period for the intended designation on March 1, 2016 (81 FR 10563). The public comment period closed on March 31, 2016. The updated recommendations, the EPA's February 2016 responses to those letters, any modifications, and the subsequent state and public comment letters, are in the docket for the Round 2 SO<sub>2</sub> designations at Docket ID No. EPA-HQ-OAR-2014-0464 and are available on the SO<sub>2</sub> designations Web site.

Before taking final action, however, the parties to *Sierra Club and NRDC v. McCarthy* filed the first in a series of joint stipulations extending the deadline for these four areas in Texas, out to November 29, 2016.<sup>2</sup> In the final rule signed on June 30, 2016, the EPA promulgated designations for the Round 2 areas for which no extensions in the deadline had been obtained (including the eight other Texas areas) and explained the ongoing process for completing SO<sub>2</sub> designations for all

<sup>1</sup> This view was confirmed in *Catawba County v. EPA*, 571 F.3d 20 (D.C. Cir. 2009).

<sup>2</sup> The parties to *Sierra Club and NRDC v. McCarthy* also filed a joint stipulation extending the Round 2 designation deadline for the Muskogee County Area in Oklahoma out to December 31, 2016.

areas of the country by December 31, 2020 (*see generally* 81 FR 45042–43).

In these supplemental Round 2 designations, and consistent with the extended deadline under the consent decree, the EPA must designate the four areas in Texas associated with the following sources by November 29, 2016: The Big Brown Steam Electric Station in the Freestone and Anderson Counties Area, the Sandow Power Station in the Milam County Area, the Martin Lake Electrical Station in the Rusk and Panola Counties Area, and the Monticello Steam Electric Station in the Titus County Area.

#### **V. What guidance did the EPA issue and how did the EPA apply the statutory requirements and applicable guidance to determine area designations and boundaries?**

Following entry of the March 2, 2015, court order, the EPA issued updated designations guidance through a March 20, 2015, memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Air Division Directors, U.S. EPA Regions 1–10 titled, “Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard.” As explained in the final rule addressing the second round of SO<sub>2</sub> designations for other areas signed on June 30, 2016, this guidance contains the factors the EPA intends to evaluate in determining the appropriate designations and associated boundaries for all remaining areas in the country, including: (1) Air quality characterization via ambient monitoring or dispersion modeling results; (2) emissions-related data; (3) meteorology; (4) geography and topography; and (5) jurisdictional boundaries. *See* 81 FR at 45043. Additional information regarding relevant guidance relied upon in designating the other second round areas and that is also used in this supplemental action is available in the previously issued final rule. *See id.*

#### **VI. What air quality information has the EPA used for these designations?**

To inform designations for the SO<sub>2</sub> NAAQS, air agencies have the flexibility to characterize air quality using either appropriately sited ambient air quality monitors or using modeling of actual or allowable source emissions. The EPA’s non-binding Monitoring Technical Assistance Document (TAD) and Modeling TAD contain scientifically sound recommendations on how air agencies should conduct such monitoring or modeling. For the SO<sub>2</sub> designations of the four Texas areas addressed in this supplemental action,

the EPA is using the same approach taken for a number of areas designated in the final rule signed on June 30, 2016, and considering available air quality monitoring data from calendar years 2012–2015, and modeling submitted by the affected emissions sources and a public interest group. *See* 81 FR 45043. In the modeling runs, the impacts of the actual emissions for the 3-year periods 2012–2014 or 2013–2015 were considered. The 1-hour primary SO<sub>2</sub> standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. The EPA has concluded that dispersion modeling shows that three Round 2 areas in Texas (portions of Freestone and Anderson Counties, portions of Rusk and Panola Counties, and portions of Titus County) are not meeting the 1-hour primary SO<sub>2</sub> standard and we are, therefore, designating these areas as nonattainment. Based on available information, the EPA has also concluded that it cannot determine whether one Round 2 area in Texas (Milam County) is or is not meeting the 1-hour primary SO<sub>2</sub> standard and whether the area contributes to a violation in a nearby area. Therefore, we are designating this area as unclassifiable. Details about the available information can be found in the supplemental technical support document in the docket for the Round 2 SO<sub>2</sub> designations at Docket ID No. EPA–HQ–OAR–2014–0464.

#### **VII. How do the designations supplementing the Round 2 designations affect Indian country?**

For the designations in four areas of Texas for the 2010 primary SO<sub>2</sub> NAAQS supplementing the Round 2 designations, the EPA is designating 3 state areas as nonattainment and 1 state area as unclassifiable. No areas of Indian country are being designated as part of this action.

#### **VIII. Where can I find information forming the basis for this action and exchanges between the EPA, states and tribes related to this action?**

Information providing the basis for this action can be found in several technical support documents (TSDs), a response to comments document (RTC) and other information in the docket. The TSDs, RTC, applicable EPA guidance memoranda and copies of correspondence regarding this process

between the EPA and the states, tribes and other parties, are available for review at the EPA Docket Center listed above in the **ADDRESSES** section of this document and on the agency’s SO<sub>2</sub> Designations Web site at <https://www.epa.gov/sulfur-dioxide-designations>. Area-specific questions can be addressed by the EPA Regional office (*see* contact information provided at the beginning of this notice).

#### **IX. Environmental Justice Concerns**

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. This final action addresses designation determinations for four areas in Texas for the 2010 primary SO<sub>2</sub> NAAQS. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

#### **X. Statutory and Executive Order Reviews**

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, the EPA assigns designations to selected areas as required.

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is exempted from the Office of Management and Budget because it responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS.

##### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. This action responds to the requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This requirement is prescribed in the CAA section 107 of title 1. This action does not contain any information collection activities.

*C. Regulatory Flexibility Act (RFA)*

This final rule is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice-and-comment requirements under the APA but is subject to the CAA section 107(d)(2)(B) which does not require a notice-and-comment rulemaking to take this action.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandates as described by URM, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This final action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175. This action concerns the designation of certain areas in the U.S. for the 2010 primary SO<sub>2</sub> NAAQS. The CAA provides for states and eligible tribes to develop plans to regulate emissions of air pollutants within their areas, as necessary, based on the designations. The Tribal Authority Rule (TAR) provides tribes the opportunity to apply for eligibility to develop and implement CAA programs, such as programs to attain and maintain the SO<sub>2</sub> NAAQS, but it leaves to the discretion of the tribe the decision of whether to apply to develop these programs and which programs, or appropriate elements of a program, the tribe will seek to adopt. This rule does not have a substantial direct effect on one or more Indian tribes. It does not create any additional requirements beyond those of the SO<sub>2</sub> NAAQS. This rule establishes the designations for certain areas of the country for the SO<sub>2</sub> NAAQS, but no areas of Indian country are being designated in this action. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA

and the TAR establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, after the EPA promulgated the 2010 primary SO<sub>2</sub> NAAQS, the EPA communicated with tribal leaders and environmental staff regarding the designations process. The EPA also sent individualized letters to all federally recognized tribes to explain the designation process for the 2010 primary SO<sub>2</sub> NAAQS, to provide the EPA designations guidance, and to offer consultation with the EPA. The EPA provided further information to tribes through presentations at the National Tribal Forum and through participation in National Tribal Air Association conference calls. The EPA also sent individualized letters to all federally recognized tribes that submitted recommendations to the EPA about the EPA's intended designations for the SO<sub>2</sub> standard and offered tribal leaders the opportunity for consultation. These communications provided opportunities for tribes to voice concerns to the EPA about the general designations process for the 2010 primary SO<sub>2</sub> NAAQS, as well as concerns specific to a tribe, and informed the EPA about key tribal concerns regarding designations as the rule was under development. For this supplemental round of SO<sub>2</sub> designations action, the EPA sent additional letters to tribes that could potentially be affected and offered additional opportunities for participation in the designations process. The communication letters to the tribes are provided in the dockets for Round 1 designations (Docket ID No. EPA-HQ-OAR-2012-0233) and Round 2 designations (Docket ID No. EPA-HQ-OAR-2014-0464).

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866. While not subject to the Executive Order, this final action may be especially important for asthmatics, including asthmatic children, living in SO<sub>2</sub> nonattainment areas because respiratory effects in asthmatics are among the most sensitive health endpoints for SO<sub>2</sub> exposure. Because asthmatic children are considered a sensitive population, the EPA evaluated the potential health effects of exposure to SO<sub>2</sub> pollution among asthmatic children as part of the EPA's prior

action establishing the 2010 primary SO<sub>2</sub> NAAQS. These effects and the size of the population affected are summarized in the EPA's final SO<sub>2</sub> NAAQS rules. See <http://www3.epa.gov/ttn/naaqs/standards/so2/fr/20100622.pdf>.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and or indigenous peoples, as specified Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in Section IX of this document.

*K. Congressional Review Act (CRA)*

The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 12, 2017.

*L. Judicial Review*

Section 307 (b) (1) of the CAA indicates which Federal Courts of Appeal have venue for petitions for review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of "nationally applicable

regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

This final action designating areas for the 2010 primary SO<sub>2</sub> NAAQS is “nationally applicable” within the meaning of section 307(b)(1). As explained in the preamble, this final action supplements the June 30, 2016 final action taken by the EPA to issue a second round of designations for areas across the U.S. for the 2010 primary SO<sub>2</sub> NAAQS. EPA determined the June 30, 2016 final action was “nationally applicable” within the meaning of section 307(b)(1). 81 FR 45045. The rulemaking docket, EPA–HQ–OAR–2014–0464, is the same docket for both the June 30, 2016 action and for this supplemental action, with the relevant difference being that in addition to the materials it contained regarding these four Texas areas generated through June 30, 2016—the date that action was signed by the Administrator—it now also contains the final technical support documents and responses to comments related to these four areas. Both the June 30, 2016 action and this supplemental action were proposed in a single March 1, 2016, notice announcing the EPA’s intended Round 2 designations and were taken to discharge a duty under the court order to issue a round of designations of areas with sources meeting common criteria in the court

order. As explained in the June 30, 2016 final rule, at the core of that final action and this supplemental final action is the EPA’s interpretation of the definitions of nonattainment, attainment and unclassifiable under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country. *Id.* Accordingly, the Administrator has determined that this supplemental final action, which results from the same proposed action as the June 30, 2016 final action, is nationally applicable and is hereby publishing that finding in the **Federal Register**.

For the same reasons, the Administrator also is finding that this supplemental final action is based on a determination of nationwide scope and effect for the purposes of section 307(b)(1). As previously explained in the June 30, 2016 final action, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that an action is of “nationwide scope or effect” would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. 81 FR 45045. Here, the June 30, 2016 final action and this supplemental final action combined issue designations in 65 areas in 24 states and extend to numerous judicial circuits. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the action to be of “nationwide scope or effect” and for venue to be in the D.C. Circuit. Therefore, like the June 30, 2016 final

action it supplements, *see* 81 FR at 45045, this final action is based on a determination by the Administrator of nationwide scope or effect, and the Administrator is hereby publishing that finding in the **Federal Register**.

Thus, any petitions for review of these final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 29, 2016.

Gina McCarthy,  
Administrator.

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

#### PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

#### Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.344 is amended by revising the table titled “Texas—2010 Sulfur Dioxide NAAQS (Primary)” to read as follows:

#### § 81.344 Texas.

\* \* \* \* \*

#### TEXAS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Freestone and Anderson Counties, TX <sup>1</sup> .....	1/12/17	Nonattainment.
Freestone County (part) and Anderson County (part) Those portions of Freestone and Anderson Counties encompassed by the rectangle with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 14 with datum NAD83 as follows: (1) Vertices—UTM Easting (m) 766752.69, UTM Northing (m) 3536333.0, (2) vertices—UTM Easting (m) 784752.69, UTM Northing (m) 3536333.0, (3) vertices—UTM Easting (m) 784752.69, UTM Northing (m) 3512333.0, (4) vertices—UTM Easting (m) 766752.69, UTM Northing (m) 3512333.0		
Rusk and Panola Counties, TX <sup>1</sup> .....	1/12/17	Nonattainment.
Rusk County (part) and Panola County (part) Those portions of Rusk and Panola Counties encompassed by the rectangle with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 15 with datum NAD83 as follows: (1) Vertices—UTM Easting (m) 340067.31, UTM Northing (m) 3575814.75 (2) vertices—UTM Easting (m) 356767.31, UTM Northing (m) 3575814.75 (3) vertices—UTM Easting (m) 356767.31, UTM Northing (m) 3564314.75 (4) vertices—UTM Easting (m) 340067.31, UTM Northing (m) 3564314.75		
Titus County, TX <sup>1</sup> .....	1/12/17	Nonattainment.
Titus County (part) That portion of Titus County encompassed by the rectangle with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 15 with datum NAD83 as follows:		



## TEXAS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)—Continued

Designated area	Designation	
	Date	Type
(1) Vertices—UTM Easting (m) 304329.030, UTM Northing (m) 3666971.0, (2) vertices—UTM Easting (m) 311629.030, UTM Northing (m) 3666971.0, (3) vertices—UTM Easting (m) 311629.03, UTM Northing (m) 3661870.5, (4) vertices—UTM Easting (m) 304329.03, UTM Northing (m) 3661870.5		
Milam County, TX <sup>1</sup> .....	1/12/17	Unclassifiable.
Milam County, TX		
Potter County, TX <sup>1</sup> .....	9/12/16	Unclassifiable.
Potter County, TX		
Atascosa County, TX <sup>1</sup> .....	9/12/16	Unclassifiable/At- tainment.
Atascosa County, TX		
Fort Bend County, TX <sup>1</sup> .....	9/12/16	Unclassifiable/At- tainment.
Fort Bend County		
Goliad County, TX <sup>1</sup> .....	9/12/16	Unclassifiable/At- tainment.
Goliad County		
Lamb County, TX <sup>1</sup> .....	9/12/16	Unclassifiable/At- tainment.
Lamb County		
Limestone County, TX <sup>2</sup> .....	9/12/16	Unclassifiable/At- tainment.
Limestone County		
McLennan County, TX <sup>2</sup> .....	9/12/16	Unclassifiable/At- tainment.
McLennan County, TX		
Robertson County, TX <sup>2</sup> .....	9/12/16	Unclassifiable/At- tainment.
Robertson County		

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.<sup>2</sup> Includes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

[FR Doc. 2016–29561 Filed 12–12–16; 8:45 am]

BILLING CODE 6550–50-P

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric  
Administration

## 50 CFR Part 622

[Docket No. 130312235–3658–02]

RIN 0648–XF058

Fisheries of the Caribbean, Gulf of  
Mexico, and South Atlantic; Re-  
Opening of the Commercial Sector for  
South Atlantic Vermilion Snapper**AGENCY:** National Marine Fisheries  
Service (NMFS), National Oceanic and  
Atmospheric Administration (NOAA),  
Commerce.**ACTION:** Temporary rule; re-opening.**SUMMARY:** NMFS announces the re-  
opening of the commercial sector for  
vermilion snapper in the exclusive  
economic zone (EEZ) of the South  
Atlantic through this temporary rule.  
The most recent commercial landing  
data for vermilion snapper indicate the  
commercial annual catch limit (ACL) forthe July through December 2016 fishing  
season has not yet been reached.  
Therefore, NMFS re-opens the  
commercial sector for vermilion snapper  
in the South Atlantic EEZ for 2 days to  
allow the commercial ACL to be caught,  
while minimizing the risk of the  
commercial ACL being exceeded.  
**DATES:** This rule is effective 12:01 a.m.,  
local time, December 14, 2016, until  
12:01 a.m., local time, December 16,  
2016.**FOR FURTHER INFORMATION CONTACT:**  
Mary Vara, NMFS Southeast Regional  
Office, telephone: 727–824–5305, email:  
mary.vara@noaa.gov.**SUPPLEMENTARY INFORMATION:** The  
snapper-grouper fishery of the South  
Atlantic includes vermilion snapper and  
is managed under the Fishery  
Management Plan for the Snapper-  
Grouper Fishery of the South Atlantic  
Region (FMP). The FMP was prepared  
by the South Atlantic Fishery  
Management Council and is  
implemented by NMFS under the  
authority of the Magnuson-Stevens  
Fishery Conservation and Management  
Act (Magnuson-Stevens Act) by  
regulations at 50 CFR part 622.The commercial ACL (equal to the  
commercial quota) for vermilionsnapper in the South Atlantic is divided  
into separate quotas for two 6-month  
time periods each year, January through  
June and July through December. For  
the July through December 2016 period,  
the commercial quota is 388,703 lb  
(176,313 kg, gutted weight, 431,460 lb  
(195,707 kg), round weight), as specified  
in 50 CFR 622.190(a)(4)(ii)(D).On July 1, 2016, the commercial  
fishing season opened for the second  
period of July through December for this  
fishing year. Under 50 CFR  
622.191(a)(6)(ii), NMFS is required to  
reduce the commercial trip limit for  
vermilion snapper from 1,000 lb (454  
kg), gutted weight, 1,110 lb (503 kg),  
round weight, when 75 percent of the  
respective fishing season commercial  
quota is reached or projected to be  
reached. Accordingly, on August 25,  
2016 (81 FR 58411), NMFS published a  
temporary rule in the **Federal Register**  
to reduce the commercial trip limit for  
vermilion snapper in or from the EEZ of  
the South Atlantic for the July through  
December 2016 period to 500 lb (227  
kg), gutted weight. The commercial trip  
limit reduction was effective at 12:01  
a.m., local time, August 28, 2016.Under 50 CFR 622.193(f)(1), NMFS is  
required to close the commercial sector  
for vermilion snapper when the



## **Exhibit 2**



E. SCOTT PRUITT  
ADMINISTRATOR

September 21, 2017

Mr. Daniel Jude Kelly  
Vice President and Associate General Counsel  
Vistra Energy  
1601 Bryan Street  
Dallas, Texas 75201

Re: Response to Petition for Reconsideration and Administrative Stay

Dear Mr. Kelly:

Thank you for your petition for reconsideration and administrative stay dated February 13, 2017, to U.S. Environmental Protection Agency Acting Administrator Catherine McCabe regarding the EPA's December 13, 2016, final rule titled, "Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard – Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County" (81 FR 89870). In the petition, Vistra Energy Corporation requests that the EPA reconsider and immediately stay the effective date of the final rule for the three areas in Texas designated as nonattainment for the 2010 SO<sub>2</sub> Primary National Ambient Air Quality Standard.

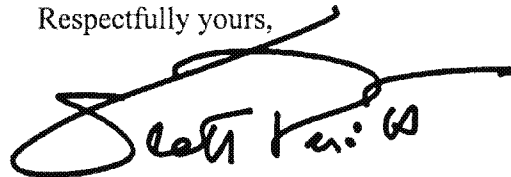
We applaud the state and company's commitment to setting up a monitoring network and stand ready to provide constructive guidance regarding the best methods for collecting air quality information for these areas. After review of the information contained in your petition, we intend to undertake an administrative action with notice and comment to revisit the nonattainment designation for the portions of Freestone and Anderson Counties, Rusk and Panola Counties and Titus County. While the notice-and-comment action is pending, the SO<sub>2</sub> nonattainment designations for portions of Freestone and Anderson Counties, Rusk and Panola Counties and Titus County set out in the December 13, 2016, *Federal Register* remain effective.

While the designations for these areas remain effective, the EPA is considering a variety of administrative options for revisiting them, some of which may alleviate associated and pending planning obligations. It is our intent to provide clarity regarding any potential changes before the state or regulated entity expend resources investing in regulatory obligations that are currently required. Accordingly, in order to better assist us in considering the available administrative

options, we remain interested in a continued dialogue to discuss the state agency and stakeholder resource decisions likely to be impacted during the pendency of this review.

If you have any questions, please contact me or have your staff contact Anna Marie Wood of the Office of Air Quality Planning and Standards at [wood.anna@epa.gov](mailto:wood.anna@epa.gov) or (919) 541-3604.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, stylized loop at the beginning and a horizontal line extending to the right.

E. Scott Pruitt

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S.PLACE  
NEW ORLEANS, LA 70130

October 22, 2018

Ms. Amanda Shafer Berman  
U.S. Department of Justice  
Environment & Natural Resources Division  
601 D Street, N.W.  
Suite 8000  
Washington, DC 20004-0000


No. 17-60088 State of Texas, et al v. EPA, et al  
Agency No. 81 Fed. Reg. 89,870

Dear Ms. Berman,

The Court has requested a supplemental status report to be filed within 14 days, from the date of this letter. Please provide a supplemental report to the status report filed on October 9, 2018, stating what administrative actions, if any, have been taken by the EPA regarding the nonattainment designations challenged in this case during the year since this case has been placed in abeyance. If no such actions have been taken, please report to the court, a date by which the EPA intends to take any such action.

Sincerely,

LYLE W. CAYCE, Clerk



By:  
Majella A. Sutton, Deputy Clerk  
504-310-7680

cc:

Mr. Thomas Joseph Cmar  
Mr. Avi S. Garbow  
Mr. Philip Stephen Gidiere III  
Mr. Daniel Jude Kelly  
Mr. Carl Grady Moore III  
Ms. Stephanie Zapata Moore  
Ms. Lisa Katherine Perfetto  
Mr. Craig James Pritzlaff  
Mr. Joshua Smith

**From:** Casso, Ruben [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E33DF0ABBBF049959E9100E556C7E634-CASSO, RUBEN]  
**Sent:** 5/30/2018 3:13:22 PM  
**To:** Olszewski, Joshua [olszewski.joshua@epa.gov]  
**Subject:** FYI: TX SO<sub>2</sub> -weblinks & Round 2 source excerpts from TCEQ 2017 & 2018 AMNPs & DRR submittals

**2017 AMNP Page 8:**

Table 2 also lists the three additional monitoring stations in areas designated nonattainment by the EPA, effective January 12, 2017. However, a request for reconsideration of all three SO<sub>2</sub> nonattainment designations was submitted to the EPA in February 2017. At this time, the **TCEQ intends to deploy monitoring stations near Big Brown Steam Electric Station, Monticello Steam Electric Station, and Martin Lake Electrical Station** based on the evaluation of monitoring locations outlined in Appendix E of this document. The proposed monitoring stations will include federal reference method (FRM) or federal equivalent method (FEM) monitors designated as special purpose monitors for determining compliance or progress towards compliance with the one-hour SO<sub>2</sub> standard in these nonattainment areas

**2018 AMNP page 11:**

The 2017 TCEQ AMNP recommended deploying monitors to characterize levels of SO<sub>2</sub> in areas designated nonattainment for the 2010 one-hour SO<sub>2</sub> NAAQS. In a letter dated August 10, 2017, the EPA concurred with the TCEQ's recommended site locations for these new monitors. The **TCEQ deployed SO<sub>2</sub> monitors near Big Brown Steam Electric Station at Fairfield FM 2570 Ward Ranch on October 30, 2017, and near Martin Lake Electrical Station at Tatum CR 2181d Martin Creek Lake on November 1, 2017, to determine compliance or progress towards compliance with the 2010 one-hour SO<sub>2</sub> primary standard in these nonattainment areas. No monitors were deployed in the area around Monticello Steam Electric Station, as the source was retired on February 8, 2018.**

**1/25/2016 TCEQ letter to EPA: Sulfur dioxide (SO<sub>2</sub>) sources identified for further evaluation and air quality characterization**

<https://www.epa.gov/sites/production/files/2016-06/documents/tx.pdf>

In developing the enclosed list of sources, the Texas Commission on Environmental Quality (TCEQ) reviewed the 2014 SO<sub>2</sub> emissions inventory data reported to the State of Texas Air Reporting System to identify those sources emitting 2,000 or more tpy of SO<sub>2</sub>. **The list includes 12 sources identified by the EPA's March 20, 2015 letter for designation by July 2, 2016. The EPA determined that these sources were subject to expedited area designations according to a March 2, 2015 court-ordered consent decree.**

[Texas Source Characterization Submittal \(PDF\)\(2 pp, 74 K\)](#)

[https://www.epa.gov/sites/production/files/2016-07/documents/texas\\_source\\_characterization.pdf](https://www.epa.gov/sites/production/files/2016-07/documents/texas_source_characterization.pdf)

**6/29/16 TCEQ to EPA: Air quality characterization plans for areas with identified SO<sub>2</sub> sources**

The list of 24 sources identified to the EPA for air quality characterization includes 12 sources for which the EPA proposed designations on February 11, 2016, consistent with a March 2, 2015 court-approved consent decree. While these 12 sources are subject to ongoing data requirements per the DRR, there is no need to provide any future air quality characterization plans in addition to those contained in the 2016 monitoring plan, because the EPA is required to designate these 12 sources for the 2010 SO<sub>2</sub> NAAQS by July 2, 2016. However, should the EPA designate any of the 12 sources as unclassifiable (rather than attainment, nonattainment, or unclassifiable/attainment), the TCEQ intends to characterize those sources through monitoring. Accordingly, this plan may need to be revised by the TCEQ since the court-ordered deadline for final designations of these 12 sources falls after this letter is due.

Message

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**From:** Casso, Ruben [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E33DF0ABBBF049959E9100E556C7E634-CASSO, RUBEN]  
**Sent:** 7/17/2018 3:26:17 PM  
**To:** Olszewski, Joshua [olszewski.joshua@epa.gov]  
**Subject:** FYI on TX SO2: weblinks & excerpts from TCEQ 2016, 2017 & 2018 Air Monitoring Network Plans & DRR submittals

In addition to comments on the draft TX SO2 FRN, I sent this info to Liz & Andrea, so they could see what TX said in DRR & monitoring network plans.

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**From:** Casso, Ruben  
**Sent:** Thursday, July 12, 2018 12:15 PM  
**To:** Etchells, Elizabeth <Etchells.Elizabeth@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>  
**Subject:** FYI on TX SO2: weblinks & excerpts from TCEQ 2016, 2017 & 2018 Air Monitoring Network Plans & DRR submittals

I compiled this list of 2016-2018 communications from TX on SO2 monitoring contained in DRR submittals & air monitoring network plans. The incoming petitions may said more. -Ruben

**1/25/2016 TCEQ letter to EPA: Sulfur dioxide (SO2) sources identified for further evaluation and air quality characterization**

<https://www.epa.gov/sites/production/files/2016-06/documents/tx.pdf>

In developing the enclosed list of sources, the Texas Commission on Environmental Quality (TCEQ) reviewed the 2014 SO2 emissions inventory data reported to the State of Texas Air Reporting System to identify those sources emitting 2,000 or more tpy of SO2. **The list includes 12 sources identified by the EPA's March 20, 2015 letter for designation by July 2, 2016. The EPA determined that these sources were subject to expedited area designations according to a March 2, 2015 court-ordered consent decree.**

**6/29/16 Texas Source Characterization Submittal (PDF)(2 pp, 74 K)**

[https://www.epa.gov/sites/production/files/2016-07/documents/texas\\_source\\_characterization.pdf](https://www.epa.gov/sites/production/files/2016-07/documents/texas_source_characterization.pdf)

**6/29/16 TCEQ to EPA: Air quality characterization plans for areas with identified SO2 sources**

**Page 2**

The list of 24 sources identified to the EPA for air quality characterization includes 12 sources for which the EPA proposed designations on February 11, 2016, consistent with a March 2, 2015 court-approved consent decree. While these 12 sources are subject to ongoing data requirements per the DRR, there is no need to provide any future air quality characterization plans in addition to those contained in the 2016 monitoring plan, because the EPA is required to designate these 12 sources for the 2010 SO<sub>2</sub> NAAQS by July 2, 2016. However, should the EPA designate any of the 12 sources as unclassifiable (rather than attainment, nonattainment, or unclassifiable/attainment), the TCEQ intends to characterize those sources through monitoring. Accordingly, this plan may need to be revised by the TCEQ since the court-ordered deadline for final designations of these 12 sources falls after this letter is due.

**6/29/2016 Air Monitoring Network Plan**

**Page 7**

**Changes to the Regulatory SO<sub>2</sub> Monitoring Network**

On January 15, 2016, the TCEQ provided the EPA with a list of 25 SO<sub>2</sub> sources meeting the DRR emissions applicability threshold. Based on the need to characterize air quality for the purposes of making area designations, the TCEQ will deploy source-oriented SO<sub>2</sub> monitors near 13 sources by the January 1, 2017, rule deadline. Due to the close geographical proximity of 4 out of the 13 sources, a total of 11 monitoring stations, listed in Table 2, are proposed for deployment to characterize ambient air quality surrounding each of these sources. The EPA is expected to finalize area designations for the remaining 12 sources by July 2, 2016. **The TCEQ will pursue monitoring station locations as expeditiously as practical for any of the 12 remaining sources designated as nonattainment under the EPA's final action.**

**6/28/17 2017 TX Air Monitoring Network Plan**

<https://www.epa.gov/amtic/texas-2017-annual-network-plan>

**Page 8:**

Table 2 also lists the three additional monitoring stations in areas designated nonattainment by the EPA, effective January 12, 2017. However, a request for reconsideration of all three SO<sub>2</sub> nonattainment designations was submitted to the EPA in February 2017. At this time, the **TCEQ intends to deploy monitoring stations near Big Brown Steam Electric Station, Monticello Steam Electric Station, and Martin Lake Electrical Station** based on the evaluation of monitoring locations outlined in Appendix E of this document. The proposed monitoring stations will include federal reference method (FRM) or federal equivalent method (FEM) monitors designated as special purpose monitors for determining compliance or progress towards compliance with the one-hour SO<sub>2</sub> standard in these nonattainment areas

**6/29/18 2018 TX Air Monitoring Network Plan**

**Page 11:**

The 2017 TCEQ AMNP recommended deploying monitors to characterize levels of SO<sub>2</sub> in areas designated nonattainment for the 2010 one-hour SO<sub>2</sub> NAAQS. In a letter dated August 10, 2017, the EPA concurred with the TCEQ's recommended site locations for these new monitors. The **TCEQ deployed SO<sub>2</sub> monitors near Big Brown Steam Electric Station at Fairfield FM 2570 Ward Ranch on October 30, 2017, and near Martin Lake Electrical Station at Tatum CR 2181d Martin Creek Lake on November 1, 2017, to determine compliance or progress towards compliance with the 2010 one-hour SO<sub>2</sub> primary standard in these nonattainment areas. No monitors were deployed in the area around Monticello Steam Electric Station, as the source was retired on February 8, 2018.**

Message

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**From:** Casso, Ruben [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E33DF0ABBBF049959E9100E556C7E634-CASSO, RUBEN]  
**Sent:** 6/28/2018 1:17:40 PM  
**To:** Etchells, Elizabeth [Etchells.Elizabeth@epa.gov]  
**Subject:** February 21, 2017 - Texas sues EPA over SO2 nonattainment designations - Inside EPA

FYI - Through the weblinks in this 2/21/17 news article, I found copies of the TX DC & 5<sup>th</sup> circuit petitions. OGC likely has the: "official" versions.

DC Circuit

[https://insideepa.com/sites/insideepa.com/files/documents/feb2017/epa2017\\_0367.pdf](https://insideepa.com/sites/insideepa.com/files/documents/feb2017/epa2017_0367.pdf)

5<sup>th</sup> Circuit

[https://insideepa.com/sites/insideepa.com/files/documents/feb2017/epa2017\\_0367a.pdf](https://insideepa.com/sites/insideepa.com/files/documents/feb2017/epa2017_0367a.pdf)

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**From:** Casso, Ruben  
**Sent:** Thursday, June 28, 2018 8:14 AM  
**To:** Casso, Ruben <Casso.Ruben@epa.gov>  
**Subject:** February 21, 2017 - Texas sues EPA over SO2 nonattainment designations - Inside EPA

The Daily Feed

Texas sues EPA over SO2 nonattainment designations

February 21, 2017

Texas is suing EPA over the agency's Obama-era classification of several areas of the state in "nonattainment" of the agency's 2010 sulfur dioxide (SO2) national ambient air quality standards (NAAQS), seeking to avoid stringent regulation of air pollution sources in the state.

In [its suit filed Feb. 13](#) in the U.S. Court of Appeals for the District of Columbia Circuit, Texas asks the court to review EPA's Dec. 13 rule placing three parts of the state in nonattainment with the agency's standard, set at 75 parts per billion (ppb) over one hour, and designating another as "unclassifiable."

Texas frequently clashed with the Obama EPA over what it says is the agency's overreach into states' affairs, filing numerous lawsuits over various agency rules and air quality plans for the state. With new EPA Administrator Scott Pruitt in office, a former Oklahoma attorney general who also sued EPA to assert states' rights, the relationship between EPA and the Lone Star State may now change, though it is unclear whether the Pruitt EPA will defend the Obama-era SO2 designation rule.

In its initial filing, Texas gives no reason for the suit, but nonattainment status brings with it the requirement to impose often costly pollution control mandates on industry.

Texas has also [filed suit in the 5th Circuit](#), but says it also filed in the D.C. Circuit because EPA in the rule argues it has "nationwide scope or effect," and hence must be heard in the D.C. Circuit.



However, "Jurisdiction and venue for this petition is proper in the Fifth Circuit Court of Appeals because the Final Rule is a 'locally or regionally applicable' final action of the EPA Administrator," Texas says in its filing. The 5th Circuit, based in New Orleans, is seen by some observers as more conservative and industry-friendly than the D.C. Circuit.

EPA in rule says "it has concluded that dispersion modeling shows that three . . . areas in Texas (portions of Freestone and Anderson Counties, portions of Rusk and Panola Counties, and portions of Titus County) are not meeting the 1-hour primary SO<sub>2</sub> standard and we are, therefore, designating these areas as nonattainment."

EPA says it lacks sufficient data to classify Milam County, and therefore classifies the county "unclassifiable," a status that avoids pollution controls required for nonattainment zones, but falls short of the positive assurance provided by an attainment finding.

Message

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**From:** Long, Pam [Long.Pam@epa.gov]  
**Sent:** 4/24/2018 7:24:09 PM  
**To:** Etchells, Elizabeth [Etchells.Elizabeth@epa.gov]; Mathias, Scott [Mathias.Scott@epa.gov]; Jones, Rhea [Jones.Rhea@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Carrillo, Andrea [Carrillo.Andrea@epa.gov]; Casso, Ruben [Casso.Ruben@epa.gov]; Snyder, Erik [snyder.erik@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Feldman, Michael [Feldman.Michael@epa.gov]; Hawes, Todd [Hawes.Todd@epa.gov]  
**Subject:** RE: Petition for Reconsideration from TCEQ  
**Attachments:** AX-18-000-2418 - Signed 1-12-18.pdf

Is this the acknowledgement of it? When I open you attachment looked familiar so I went digging.

---

**From:** Etchells, Elizabeth  
**Sent:** Tuesday, April 24, 2018 3:15 PM  
**To:** Mathias, Scott <Mathias.Scott@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Casso, Ruben <Casso.Ruben@epa.gov>; Snyder, Erik <snyder.erik@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Feldman, Michael <Feldman.Michael@epa.gov>; Hawes, Todd <Hawes.Todd@epa.gov>  
**Cc:** Long, Pam <Long.Pam@epa.gov>  
**Subject:** Petition for Reconsideration from TCEQ

Hi All,

While in the Round 2 docket, I stumbled across a docket submission from TCEQ submitting a Dec. 11, 2017 Petition for Reconsideration.

In the normal course of events, we would receive petitions for reconsideration through CMS so we could acknowledge and respond. Lately, things have not been entered into CMS, so we are not seeing them in a timely manner.

Attaching now for everyone's information.

Thanks,  
Liz

Liz Etchells | USEPA | OAQPS|AQPD/Geographic Strategies|Phone (919) 541-0253



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK, NC 27711

JAN 12 2018

OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

Mr. John M. Minter  
Mr. Richard A. Hyde  
Texas Commission on Environmental Quality  
Post Office Box 13087  
Austin, Texas 78711

Dear Mr. Minter and Mr. Hyde:

Thank you for your letter dated December 11, 2017, to the U.S. Environmental Protection Agency, transmitting a petition for reconsideration of the December 13, 2016, final rule titled, "Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County (81 FR 89870)." In the petition, you request that the EPA reconsider the final rule, specifically redesignating Freestone and Anderson Counties, Rusk and Panola Counties, and Titus County to attainment or unclassifiable/attainment of the 2010 SO<sub>2</sub> NAAQS.

We will carefully review and consider the information set forth in the petition. In the meantime, if you have questions, please contact me or Anna Marie Wood of the Office of Air Quality Planning and Standards at [wood.anna@epa.gov](mailto:wood.anna@epa.gov) or (919) 541-3604.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Tsirigotis", with a small circular mark below it.

Peter Tsirigotis  
Acting Director

Message

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**From:** Steven Schar [Steven.Schar@gov.texas.gov]  
**Sent:** 7/10/2018 8:56:30 PM  
**To:** Chancellor, Erin [chancellor.erin@epa.gov]  
**Subject:** SO2  
**Attachments:** SO2\_White\_Paper 060618.docx

Erin,

I hope all is well in your new job, but I guess it's not really new anymore. Can you help me get an answer on the SO2 stuff. I know Reed was working on this issue but I forgot to follow up before he left on vacation. I appreciate your help.

-SS

*Steven Schar  
Policy Advisor  
Office of Texas Governor Greg Abbott*

---

**From:** Zachary, Mance [mailto:mance.zachary@vistraenergy.com]  
**Sent:** Friday, July 06, 2018 10:54 AM  
**To:** Steven Schar <Steven.Schar@gov.texas.gov>  
**Subject:** RE: New News?

July 12<sup>th</sup> is the SIP submission deadline.

---

**From:** Steven Schar [mailto:Steven.Schar@gov.texas.gov]  
**Sent:** Friday, July 06, 2018 10:40 AM  
**To:** Zachary, Mance <mance.zachary@vistraenergy.com>  
**Subject:** Re: New News?

EXTERNAL EMAIL

What is the deadline again?

On Jul 6, 2018, at 10:21 AM, Zachary, Mance <mance.zachary@vistraenergy.com> wrote:

Mr. Schar,

I just left a voicemail message on your phone but I wanted to circle back with you regarding the SO2 non-attainment designations discussions that we had a few week ago. With the approaching deadline I wanted to check on Mr. Clay's progress with the EPA? Please advise at your convenience.

Thanks!

Mance Zachary

Vistra Energy

Mance.zachary@vistraenergy.com (email)

972-849-6997 (cell)

Message

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**From:** Chancellor, Erin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AE6AEABECA754643BDB01C9F5B653CA6-CHANCELLOR,]  
**Sent:** 11/8/2018 4:37:42 PM  
**To:** Tara Rejino [Tara.Rejino@twdb.texas.gov]  
**CC:** Abboud, Michael [abboud.michael@epa.gov]  
**Subject:** Re: Quotes by 2p today

He will be signing the Petroleum Refinery Sector Rule. He will likely also talk about the SSM SIP Call for Texas, the final SIP Requirements Rule for the 2015 Ozone NAAQS, and the 2010 SO2 designations. At some point they are supposed to discuss reservoirs in Texas and I'd think he would touch on the status of the Waters of the US rule.

**Erin E. Chancellor**

Chief of Staff | Office of the Regional Administrator  
U.S. EPA Region 6  
214.665.2112 (o) | 214.601.1292 (c)  
chancellor.erin@epa.gov

On Nov 8, 2018, at 10:34 AM, Tara Rejino <Tara.Rejino@twdb.texas.gov> wrote:

What announcements are they making today?

Tara

On Nov 8, 2018, at 10:31 AM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Thanks Erin, we are looking for quotes from your respective principals to drop in our press release. Specifically highlighting the announcements EPA is making today.

Sent from my iPhone

On Nov 8, 2018, at 10:08 AM, Chancellor, Erin <chancellor.erin@epa.gov> wrote:

Hi y'all,

Michael (cc'ed here) is putting together a press release for the meeting today. Any of you want to submit quotes for your Chairman/Commissioner? 2p deadline.

Thanks,

**Erin E. Chancellor**

Chief of Staff | Office of the Regional Administrator  
U.S. EPA Region 6  
214.665.2112 (o) | 214.601.1292 (c)  
chancellor.erin@epa.gov

Message

---

**From:** Stanton, MaryA [Stanton.Marya@epa.gov]  
**Sent:** 11/28/2018 3:26:26 PM  
**To:** Stenger, Wren [stenger.wren@epa.gov]; Price, Lisa [Price.Lisa@epa.gov]  
**CC:** Feldman, Michael [Feldman.Michael@epa.gov]; Verhalen, Frances [verhalen.frances@epa.gov]; Robinson, Jeffrey [Robinson.Jeffrey@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]  
**Subject:** AIR PROJECT Management.docx  
**Attachments:** AIR PROJECT Management.docx

Good morning all,

Here is the updated Air Project Management Chart.

Thanks  
Mary A. Stanton, Chief  
Ozone and Infrastructure Section (6MM-AB)  
EPA Region 6  
214-665-8377

## Appointment

---

**To:** Perez, Idalia [Perez.Idalia@epa.gov]; Air Program Managers - Regions [Air\_Program\_Managers\_Regions@epa.gov];  
Air Program Managers Call List [Air\_Program\_Managers@epa.gov]  
**CC:** HertzWu, Sara [HertzWu.Sara@epa.gov]; Stauffer, Panah [Stauffer.Panah@epa.gov]

**Attachments:** 1997 Ozone DAADs.pptx; CBD Lawsuit.pptx

**Location:** Conf. Line: (619) 375-3276, Conference ID: 142-7414#

**Start:** 11/13/2018 8:00:00 PM

**End:** 11/13/2018 9:00:00 PM

**Recurrence:** (none)

Update 2: additional agenda topic.

Update: Adding agenda.

### Monthly Air Program Managers Conference Call

Conference Line: (619) 375-3276

Conference ID: 142-7414#

Date: Tuesday, November 13<sup>th</sup>, 2018

Time: 3:00 Eastern Time

### Agenda

#### 3:00 - Roll Call

Attendees	
R1:	OAQPS:
R2:	OAP:
R3:	OTAQ:
R4:	ORIA:
R5:	OGC:
R6:	OAPPS:
R7:	ORD:
R8:	OECA:
R9:	OPMO:
R10:	IO:

3:05 – Updates on Dec APM Meeting, Idalia Pérez

3:15 – AQPD/SLPG Update (Standing Agenda item), Megan Brachtel (OAQPS)

- Determinations of attainment for 1997 ozone NAAQS nonattainment areas
- CBD lawsuit/NOI for Round 1 and 2 SO<sub>2</sub> Attainment Plans”?

3:35 – SIP Issues Database Update (Standing Agenda item), Megan Brachtel/Stephen Senter (OAQPS)

- o Please provide feedback on the SIP Consistency Process: [Feedback document](#).

3:45 – Appendix W issue with respect to approvability of i-SIPs, Megan Brachtel (OAQPS) and Leiran Biton (R1)

3:55 – Streamlined Legal Review, Kristi Smith (OGC)





## SUMMARY OF LAWSUIT

- On June 14, 2018, the Center for Biological Diversity (CBD), the Center for Environmental Health, and the Sierra Club, filed a lawsuit in the US District Court (Northern District of California) citing:
  - EPA's alleged failure to act on 15 pending 2010 SO<sub>2</sub> attainment plans for "Round 1" nonattainment areas in 8 states (FL, IA, IN, MI, MO, OH, WV, WI); and,
  - EPA's alleged failure to issue findings of failure to submit (FFS) for two overdue plans for nonattainment areas in two states (AZ and NJ) for the 1971 SO<sub>2</sub> NAAQS.
- On October 15, 2018, the same petitioners filed a notice of intent to sue (NOI) citing:
  - EPA's alleged failure to act on 8 additional pending attainment plans for "Round 1" areas in 4 states (AZ, KY, PA, and WV); and,
  - EPA's alleged failure to issue FFS for four "Round 2" areas in 3 states (IL, MD, and MI).
- We expect petitioners to add the additional areas from their latest NOI to an amended complaint to be filed December 17.
- OAQPS and OGC have been working with all implicated regional offices to determine dates by which regions can take final action on their pending SIPs, to inform settlement discussions.

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1

[8/18 MVB]

We responded to the court on August 24 but a briefing schedule has not yet been set.  
In the meantime, we continue to develop proposal/final notices to act on the SIPs we have pending.

**2010 SO<sub>2</sub> NAAQS Round 1 Areas Included in June 2018  
CBD Lawsuit for EPA's Alleged Failure to Act on Submitted SIPs**

Region	Nonattainment area	Actual or estimated signature date for proposal	Actual or estimated signature date for final action	Action likely approval or disapproval?
3	Steubenville, OH-WV	May 2019	December 2019	Approval
4	Hillsborough, FL	8/15/16	6/16/17	Approval
4	Nassau Co, FL	8/15/16	6/16/17	Approval
5	Indianapolis, IN	8/14/18	December 2018	Approval
5	Morgan Co, IN	November 2018	May 2019	Approval
5	Southwest, IN	8/14/18	Unknown, working through adverse comments	Unknown
5	Terre Haute, IN	8/14/18	December 2018	Approval
5	Detroit, MI		N/A	Disapproval
5	Lake Co, OH	8/20/18	December 2018	Approval
5	Muskingum River, OH		June 2019	Disapproval
5	Steubenville, OH-WV		September 2019	Approval
5	Rhineland, WI		September 2019	Disapproval
7	Muscotine, IA	Proposal signed: 8/9/17 Supplemental signed: 12/21/17	Waiting for HQ to write SSM supplemental proposal notice	Approval
7	Jackson Co, MO	11/9/18	No action planned on withdrawn portions of the SIP	
7	Jefferson Co, MO	11/9/18	No action planned on the withdrawn or CDD-suspended portions of the SIP	

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2

**1971 SO<sub>2</sub> NAAQS Nonattainment Areas Included in  
June 2018 CBD Lawsuit to Compel Findings of Failure to Submit SIPs**

Region	Nonattainment area	Missed deadline	Preferred path forward
2	NJ portion of the NE PA-Upper DE Valley Interstate AQCR	5/15/92	<ul style="list-style-type: none"> <li>NJ submitted a CDD request in August 2018 with supporting technical analysis of SO<sub>2</sub> emissions, and air quality monitoring data.</li> <li>Estimate finalize a CDD by early summer 2019 in lieu of issuing an FFS.</li> </ul>
9	Hayden, AZ	5/15/92	<ul style="list-style-type: none"> <li>State submitted SIP in 2002, but it is likely not approvable. CBD complaint does not demand action on this submittal.</li> <li>Because the new controls at the plant to meet the 2010 NAAQS are also expected to ensure attainment of the 1971 NAAQS, the region would like to avoid taking action on the 1971 NAAQS SIP or to issue an FFS.</li> </ul>

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3

**2010 SO<sub>2</sub> NAAQS Round 1 Areas Included in October 2018  
CBD NOI for EPA's Alleged Failure to Act on Submitted SIPs**

Region	Nonattainment area	Actual or estimated signature date for proposal	Estimated signature date for final action	Action likely approval or disapproval?
3	Allegheny, PA	November 2018	December 2019	Approval
3	Beaver, PA	9/24/18	June 2019	Approval
3	Indiana, PA	6/28/18	October 2019	Possible disapproval
3	Warren, PA	3/3/18	9/28/18	Approval
3	Marshall, WV	March 2019	December 2019	Possible disapproval
4	Jefferson County, KY	11/1/18	Unknown (expecting comments similar to other SO <sub>2</sub> attainment actions)	Approval
9	Hayden, AZ	May 2019	November 2019	Depends on supplemental submittal from the State
9	Miami, AZ	2/16/18	December 2018	Approval

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4

**2010 SO<sub>2</sub> NAAQS Round 2 Areas Included in  
October 2018 CBD NOI for Failure to Submit SIPs**

Region	Nonattainment area	Missed deadline	Estimated SIP submittal date and anticipated or preferred path forward
3	Anne Arundel County and Baltimore County, MD	3/12/2018	<ul style="list-style-type: none"> <li>• Early 2019 submittal is anticipated.</li> <li>• Maryland has drafted a plan, but is awaiting resolution of Telen question related to use of non-operating hours for determining compliance.</li> </ul>
5	Alton Township, IL	3/12/2018	<ul style="list-style-type: none"> <li>• State is planning on submitting in the next few months.</li> <li>• Approvability is an issue due to a Missouri source outside the nonattainment area causing violations in the nonattainment area.</li> </ul>
5	Williamson County, IL	3/12/2018	<ul style="list-style-type: none"> <li>• Ongoing petition for review of initial designation.</li> </ul>
5	St. Clair, MI	3/12/2018	<ul style="list-style-type: none"> <li>• State is planning to submit in February 2019.</li> <li>• Michigan needs to finalize a permit revision.</li> </ul>

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5

## Weekly Report - 6MM

Reporting Period: 12/16/2018(Sunday)-12/22/2018(Saturday)

### AIR BRANCH

**Independence County, Arkansas SO2 Redesignation Request:** Information: On December 24, the comment period on the proposed redesignation of Independence County from unclassifiable to unclassifiable/attainment based on new modeling closes. The proposed redesignation was requested by Governor Hutchinson. This is the first such action in the country. - *Ruben Casso (214-665-6763)*

**Houston-Galveston-Brazoria, Texas Reasonable Further Progress for 2008 8-hour Ozone NAAQS:** Decision by RA by ~~December 27~~ January 16 on final approval of the Houston-Galveston-Brazoria (HGB) Reasonable Further Progress (RFP) for the 2008 8-hour Ozone NAAQS. During the 30-day public comment period two relevant adverse comments were received from Environmental Integrity Project. The Region has worked with OGC, OAQPS, and OTAQ to respond to comments. - *Wendy Jacques (214-665-7395)*

**Houston 2008 Ozone Standard Volatile Organic Compound SIP and Reasonably Achievable Control Technology:** Decision by RA by January 31 on the final approval of the Texas' 2008 Reasonably Achievable Control Technology (RACT) demonstration for the Houston/Galveston/Brazoria non-attainment area. OAQPS, ORC and OGC staff are working to resolve a response to a comment that challenged our proposed approval. The comment raised questions on the legality of the state's approach to addressing startup, shut down and malfunction emission events and past agency proposals challenging the state on that issue. It is expected the final resolution to this comment will allow us to move forward with final approval of the RACT demonstration and proposed changes to the SIP for this area. All other responses to comments have been addressed. - *Robert Todd (214-665-2156)*

**Blanchard Refining, Texas City, Texas:** Information: By December 18, the Air Branch Chief will approve an interpollutant trade for the Blanchard Refining Company, Texas City, Texas facility. Blanchard has used NOx Emission Reduction Credits (ERCs) to offset VOC increases. Region 6 has reviewed details of the modeling supporting the request. Under the Texas SIP, interpollutant trading requires approval from TCEQ and EPA. - *Erik Snyder (214-665-7305)*

**Texas SO2 Designations Round 2 Sources (Luminant/Vistra):** Information: Luminant and Texas filed petitions for reconsideration of the SO2 non-attainment designations for areas surrounding the Big Brown, Monticello, and Martin Lake power plants. EPA responded that we will revisit those designations in a future rulemaking. Luminant has shut down two of the three sources. An anticipated Administrator decision on a proposed action is still under review. - *Ruben Casso (214-665-6763)*

**Beaumont/Port Arthur Redesignation/Maintenance Plans for the 1-hour and 1997 8-hour Ozone Standards:** Information: Region 6 is working on proposals to approve Texas SIP revisions for the old 1-hour and 1997 8-hour ozone air quality standards for a Beaumont/Port Arthur area. It includes a second 10-year maintenance SIP revision. The TCEQ target date for adoption is January 30. - *Jeffrey Riley (214-665-8542)*

**Citizen of Potawatomie Nation, Oklahoma:** Information: On December 20, Region 6 notified the Citizen of Potawatomie Nation (CPN) that the general permit application for building a small power plant (4 MWh) using reciprocal internal combustion engines (RICE), which will be funded by U.S. DOE, is incomplete. CPN is aware that DOE needs to complete the ESA determination action to fund the project before the application can be deemed complete. - *Bonnie Braganza (214-665-7340)*

**Texas Regional Haze BART FIP:** Information: The comment period closed on October 26 for the Texas Regional Haze BART FIP proposal to affirm our October 2017 final rule. We received approximately 1500 comment letters, emails, and online through regulations.gov from environmental groups, industry, TCEQ, and New Jersey DEP. While industry and TCEQ are generally supportive of our proposal, environmental groups are in favor of the proposed source by source BART as presented in the January 2017 proposal. Final action for Administrator's signature anticipated by May 15, 2019. - *Jennifer Huser (214-665-7347)*

**Arkansas Regional Haze Phase II SIP Revision:** Information: On December 31, the comment period for EPA's proposed approval of the Arkansas Regional Haze Phase II SIP revision closes. The SIP revision addresses SO<sub>2</sub> and PM BART requirements for electric generating units (EGUs) and reasonable progress requirements for SO<sub>2</sub> and PM emission and will replace a portion of the existing FIP. - *Dayana Medina (214-665-7241)*

**Exceptional Event Mitigation Plan for Harris and El Paso Counties, Texas:** Information: On December 20, the RA accepted as being complete TCEQ's Exceptional Event Mitigation Plan for PM<sub>10</sub> High Wind Dust Events in El Paso County, and PM<sub>2.5</sub> African Dust Events in Harris County. The plan addressed all applicable regulatory requirements (e.g., public notification and education, abatement measures, responses to public notice comments). - *Dorothy Crawford (214-665-2771)*

**Dallas/Fort Worth Redesignation/Maintenance Plans for the 1-hour and 1997 8-hour Ozone Standards:** Information: Region 6 is working on proposals to approve Texas SIP revisions for the old 1-hour and 1997 8-hour ozone air quality standards for the DFW redesignation SIP revisions. The TCEQ adopted the proposal on December 12 and anticipates adopting the final SIP revisions on March 31. - *Carl Young (214-665-6645)*

~~**Houston Reasonable Further Progress SIP:** Decision by RA by December 28 on final approval of the Houston reasonable further progress (RFP) SIP, which concludes that Texas has met the Clean Air Act requirement to reduce ozone precursor emissions in the Houston 2008 ozone standard nonattainment area. — *Wendy Jacques (214-665-7395)*~~



**Pueblo of Santa Ana's CAA TAS Application:** Decision by RA by February 14 on the Pueblo of Santa Ana Treatment as a State (TAS) request under CAA authority for Sections 105, 107(d)(3), 126, and 505(a)(2). This application will authorize the Pueblo to apply for funding under CAA 105 provisions and receive notifications of CAA permit applications. - *Aunjanee Gautreaux (214-665-7127)*

**Oklahoma Interstate Transport SIP 1997 Ozone Standard:** Decision by RA by December 27~~28~~ on final approval of the Oklahoma interstate transport SIP, which concludes that Oklahoma emissions do not interfere with maintenance of the 1997 ozone standard in other states. - *Carl Young (214-665-6645)*

**St. Bernard Parish, Louisiana:** Information: On December 20, the RA approved the supplemental notice of proposed rulemaking for the SO2 attainment demonstration for St. Bernard Parish. RAIN, a carbon calciner, and LDEQ have agreed on new emissions and operating limits. LDEQ supplemented its previous SO2 attainment demonstration SIP with a consent order and provided additional modeling to EPA. - *Ruben Casso (214-665-6763)*

#### **RCRA BRANCH**

**Louisiana Authorization for RCRA Cluster 24:** Information: On December 18, the RA approved the final authorization of Louisiana's rules for portions of hazardous waste regulations under RCRA Cluster XXIV. - *Kishor Fruitwala (214-665-6669) (Cell-214-608-0837)*

EPA Region 6 Attainment, Nonattainment<sup>1</sup>, Unclassifiable, Maintenance<sup>2</sup> areas, and areas where the Redesignation Substitute was approved.

Pollutant	State and Area or County/Parish Name				
	Arkansas	Louisiana	New Mexico	Oklahoma	Texas
<b>Ozone 1997 (84 ppb)</b>	Maintenance: Crittenden County (2010)	Maintenance: Baton Rouge area (2010)	Attainment	Attainment	Maintenance: Beaumont (2010) Redesignation Substitute: DFW (Dec 2016) Redesignation Substitute: Houston (Dec 2016)
<b>Ozone: 2008 (75 ppb)</b>	Maintenance: Crittenden County May 2016	Maintenance: Baton Rouge area March 2017	Attainment	Attainment	Nonattainment: DFW and Houston areas DFW population: 6,948,790 NOx Mobile 72%, VOC Stationary 70% Houston population: 6,627,384 NOx Mobile 55%, VOC Stationary 65%
<b>Ozone: 2015<sup>3</sup> (70 ppb)</b>	Attainment	Nonattainment: Baton Rouge area population 762,581 NOx Stationary 67% VOC Stationary 70%	Nonattainment: Dona Ana County (partial) Population 214,295 NOx Mobile 64% VOC Stationary 56%	Attainment	Nonattainment: DFW, Houston, San Antonio, and El Paso El Paso population: 835,593 NOx Mobile 72%, VOC Stationary 63% San Antonio population: 1,897,753 NOx Mobile 59%, VOC Stationary 64%
<b>SO2</b>	Unclassifiable: Independence Co.	Nonattainment: St. Bernard Parish Population: 45,408	No designations	Attainment: Noble & Choctaw Counties	Nonattainment: Partial counties: Titus, Rusk, Panola, Freestone, and Anderson. Populations: Titus: 32,623; Rusk: 53,070; Panola: 23,766; Freestone: 19,691; and Anderson: 57,580
	Attainment: Jefferson Co.	Unclassifiable: Calcasieu Parish			Unclassifiable: Milam and Potter counties
		Attainment: De Soto Parish			Attainment: Atascosa, Fort Bend, Goliad, Lamb, Limestone, McLennan and Robertson counties
<b>CO</b>	Attainment: Arkansas, Louisiana, New Mexico and Oklahoma				Maintenance: El Paso County (2008)
<b>Lead<sup>5</sup></b>	Attainment: Arkansas, Louisiana, New Mexico and Oklahoma				Maintenance: Collin County (partial) (2017)
<b>NO2</b>	Attainment: all 5 states in Region 6				
<b>PM2.5</b>	Attainment: all 5 states in Region 6				

<sup>1</sup> The ozone nonattainment area populations are 2015 census estimates. The NOx and VOC numbers are 2014 National Emission Inventory data and sources include mobile (on-road and nonroad), stationary (point and area), and fires. The dominant source category for each precursor is provided, e.g., "NOx Mobile 72%" means 72% of the NOx emissions for the area are mobile sources and the remainder (28%) of those NOx emissions are stationary sources. Fires account for 14% or less of the emissions and are primarily VOC.

<sup>2</sup> Maintenance areas and those with the Redesignation Substitute have attained that NAAQS and have an approved maintenance plan for that NAAQS.

<sup>3</sup> Designations under the 2015 ozone NAAQS are pending and such designations in this table are based on the recommendations submitted to EPA by the states.

<sup>4</sup> We have been petition for reconsideration. We expect the agency will reconsider the designation to allow Texas to collect monitoring data.

<sup>5</sup> The approval of the maintenance plan was signed on June 13, 2017.

Message

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**From:** Stenger, Wren [stenger.wren@epa.gov]  
**Sent:** 12/6/2018 7:25:08 PM  
**To:** McGee, Tomika [McGee.Tomika@epa.gov]  
**CC:** Price, Lisa [Price.Lisa@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]  
**Subject:** non-attainment areas

Tomika,

Please work with Guy to schedule a briefing with Anne/David on O3 and SO2 non-attainment and attainment demonstrations. He is working on a chart for this. Thanks

~~WREN STENGER~~  
~~DIRECTOR, MULTIMEDIA DIVISION~~  
~~EPA REGION 6 DALLAS, TEXAS~~  
~~214.665.6583~~

## Appointment

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**From:** McGee, Tomika [McGee.Tomika@epa.gov]  
**Sent:** 12/17/2018 2:00:27 PM  
**To:** Stenger, Wren [stenger.wren@epa.gov]; Price, Lisa [Price.Lisa@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Feldman, Michael [Feldman.Michael@epa.gov]; Stanton, MaryA [Stanton.Marya@epa.gov]  
**Subject:** Nonattainment Area  
**Attachments:** R6 nonattainment areas for performance board.docx; nonattainment WE CARE ozone.docx  
**Location:** 7th Flr., Little Rock Conf. Rm.  
**Start:** 12/17/2018 5:15:00 PM  
**End:** 12/17/2018 6:00:00 PM  
**Show Time As:** Tentative

This is a prebrief for the Tuesday morning Ozone and SO2 nonattainment and attainment demonstration briefing.

7/31/2018

## **National Ambient Air Quality Standards (NAAQS)/Nonattainment**

EPA helps protect public health and welfare by setting national ambient air quality standards (NAAQS) for commonly occurring air pollutants. These pollutants are:

- Ozone
- Particulate matter
- Sulfur dioxide
- Lead
- Nitrogen dioxide
- Carbon monoxide

EPA designates as “nonattainment” any area that:

- Does not meet an air quality standard.
- Contributes to air quality in a nearby area that does not meet an air quality standard.

Region 6 has 3 ozone nonattainment areas for the 2015 8-hour ozone standard of 70 parts per billion (ppb).

- Houston (also nonattainment for the 2008 ozone standard of 75 ppb).
- Dallas-Fort Worth (also nonattainment of the 2008 ozone standard of 75 ppb).
- Sunland Park, New Mexico (near El Paso, Texas).

Region 6 has 5 nonattainment areas for the 2010 sulfur dioxide standard of 75 ppb.

- St. Bernard Parish, Louisiana (near New Orleans).
- Evangeline Parish, Louisiana (in Southwest Louisiana “Cajun country”).
- Portions of: Freestone and Anderson Counties, Texas (East Texas).
- Portions of Rusk and Panola Counties, Texas (East Texas).
- Portion of Titus County, Texas (Northeast Texas).

Nonattainment designations lead to air pollution control requirements in the area such as:

- Requirements to offset additional air pollution from new or modified stationary sources (nonattainment new source review).
- Reasonable available control technology on stationary sources of air pollution.
- An inspection and maintenance program for cars (Houston and Dallas-Fort Worth only).

State Implementation Plans (SIPs) are used to attain and maintain the air quality standards and include the air pollution control requirements.

# Observations on the Effect of Buoyancy Enhancement Models on AERMOD Inputs for Two Texas Power Plants

## Summary:

Two preprocessor models have been used to modify the measured input stack parameters for two Texas power plants to allow AERMOD to emulate increased plume rise due to merging plumes and to wet scrubbers. The techniques were found to increase stack temperatures for input to AERMOD by up to 300 degrees Kelvin. The highest increases were modeled as due to merging plumes when the wind direction is in-line with the stacks. In some directions the average buoyancy flux of the stack gases was increased by 75% above that calculated from the measurements. Some possible issues are noted with regard to the directional dependence of the buoyancy enhancement due to merging plumes. Because of the extent of the changes in the stack parameters input to AERMOD significant reductions in design values may be expected from the model.

## Introduction

AERMOD modeling was conducted on behalf of Luminant for three of their Texas power plants as a modeling demonstration for SO<sub>2</sub> nonattainment designation. For three of the plants advanced techniques were used to increase the plume rise of the plants in response to two issues. These techniques, the AERLIFT and AERMOIST models, are an implementation of the findings of prior peer-reviewed research in buoyant plume rise. Both models are run as preprocessors modifying the AERMOD inputs in order to enhance the plume rise calculated within AERMOD without modifying the AERMOD plume rise code. This report examines the effect of the preprocessors on the input parameters to AERMOD for two of the plants.

AERLIFT is directed toward situations where two or more stacks line up with the wind direction causing the plumes to merge as they rise and reducing the overall entrainment of cooler ambient air. It is implemented as a pre-processor which estimates a buoyancy flux enhancement attributed to the merged stack plumes. These calculations are done for each source, for each hour. Based on several key factors, each source is tested to determine if enhancement (or partial enhancement) should occur. This enhancement is performed by increasing the hourly stack temperature and exit velocity prior to being input to AERMOD. The technique as implemented changes CEM measurements of the stack parameters.

In a stack with a wet SO<sub>2</sub> scrubber the stack gas is saturated with moisture which may condense on exiting the stack and as it cools when mixing with ambient air. AIRMOIST is an effort to account for this initial condensation of the plume moisture which liberates the heat of condensation. This additional heat increases plume buoyancy during the initial rise phase. However, when the liquid water evaporates later on it reduces the buoyancy of the plume by the same amount of the initial increase. This reduction should then act to depress plume rise but it is theorized to occur when the plume is more dilute and may have approached reached final rise – thus minimizing the effect. The implementation of the AIRMOIST model is based on a model evaluated in the peer-reviewed literature, IBJpluris, for moist plumes. AIRMOIST uses

IBJpluris to determine hourly adjustments in plume rise and then modifies stack temperatures for input to the dry plume rise model in AERMOD to force simulation of increased plume rise. Similarly to the AERLIFT model, the AIRMOIST model modifies CEM measured data prior to input to the AERMOD system.

#### Comparison of Stack Parameters

Since AERLIFT and AERMOD change measured stack parameters for input to AERMOD, an examination is made here of the extent and the occasion of the modifications to better understand the effects of the techniques. The techniques were applied to the model inputs for three of Luminant's Texas plants, Big Brown, Martin Lake and Monticello. The input modifications for two of these three plants are examined here. Big Brown has two 122 meter stacks which are 83 meters apart and line up in the direction 331 degrees from North. The AERLIFT model was applied to the measured stack parameters for Big Brown yielding modified inputs to the model. Martin Lake has wet scrubbers and emits through three 138 meter stacks 94 meters apart with an inline direction of 335 degrees from North. For Martin Lake the AERMOIST model was applied first to the measured stack parameters then AERLIFT was applied. The modified inputs for these plants are compared to the measured stack parameters to characterize the increase of temperature and velocity made in these applications of the preprocessor models.

#### Big Brown

An examination of the "AERLifted" stack parameter data for Big Brown was made to determine the degree of modification of stack temperature and velocity attributable to the use of the AERLift algorithms. The original and modified data were supplied to TCEQ and then to Region 6. The hourly stack data were paired with the hourly surface meteorological data. Hours with calms or missing meteorological data were removed from the dataset for the purpose of this analysis

Surface meteorological data are used by AERMOD to determine the wind direction affecting the plume transport<sup>1</sup> and the AERLIFT code uses the only surface meteorological file. According to the AERLift.log file (and verified from the stack coordinates) the stacks at Big Brown are aligned at 331 degrees from North and are 80.3 meters apart. The "Theta angles" for enhancement are 331 and 151, the "low" angles are 61 and 241 degrees. According to the log file "Theta angles which are closer to parallel (< 45) with the stack alignment angle will enhance more." With plus or minus 45 degrees from parallel being enhanced enhancements for the ranges 286-016 degrees and 106-196 degrees are expected. To examine the directional dependence of the temperature increase applied to the measured inputs the data were binned by the surface wind direction for every 10 degrees.

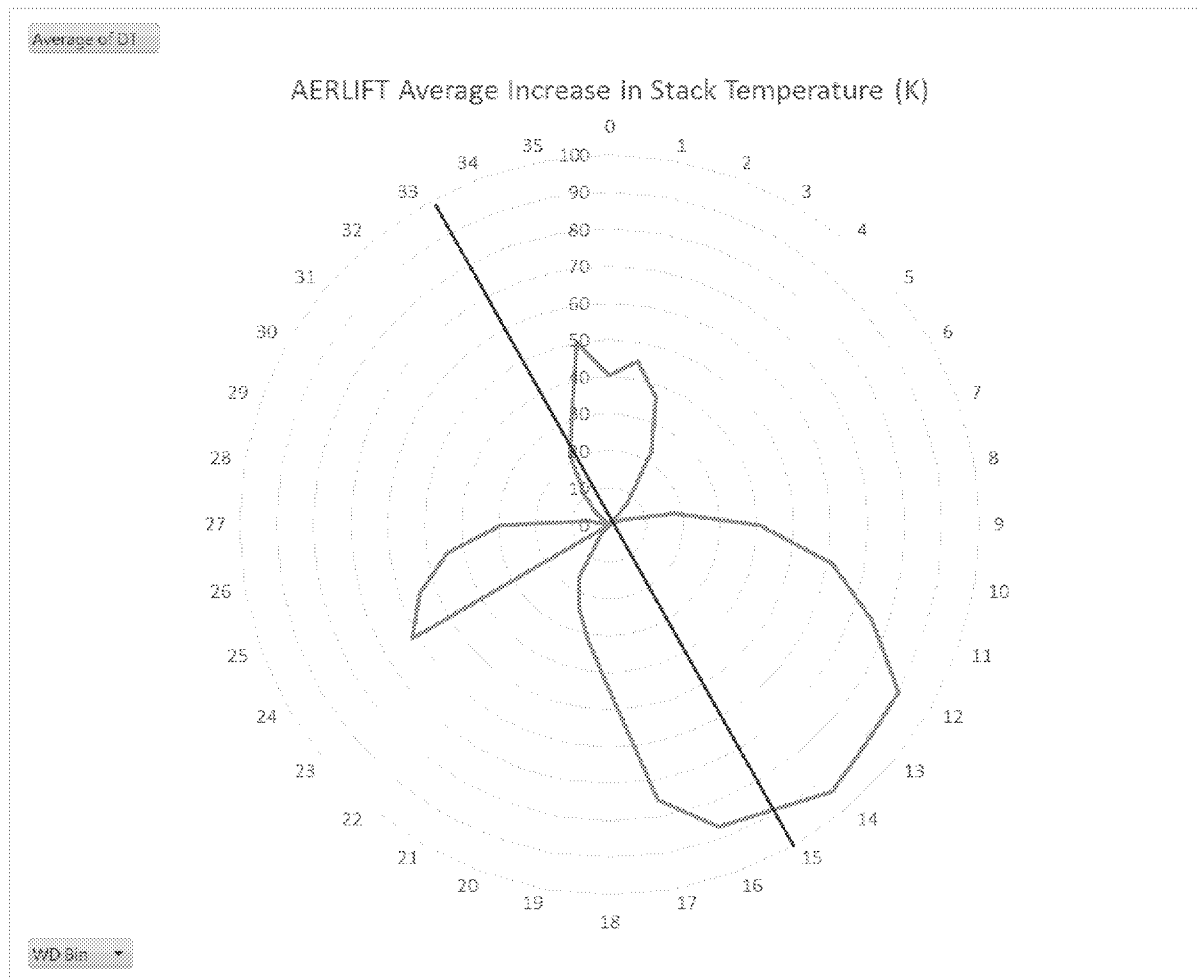
Wind Direction	Bin
0 - 10	0
10 -20	1
...	...
350 - 360	35

---

<sup>1</sup> Minimum Meteorological Requirements for AERMOD, 1998

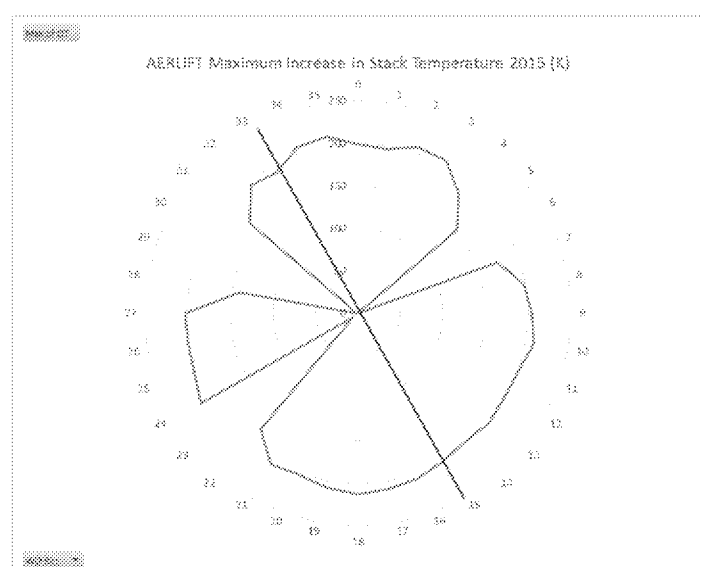
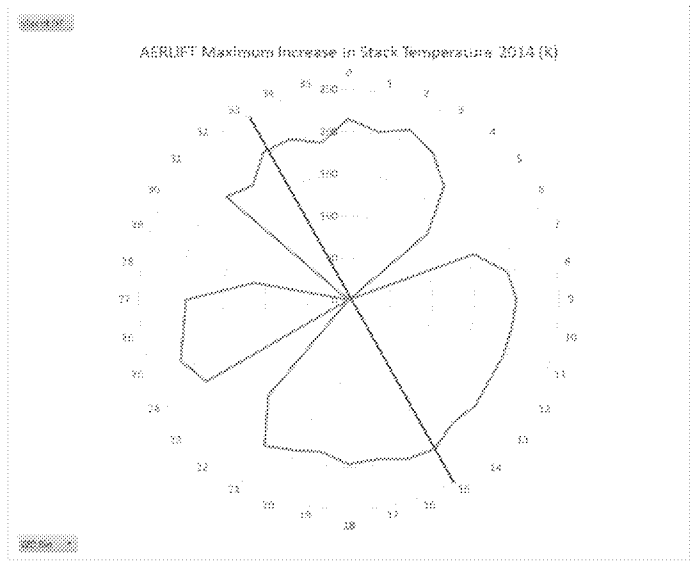
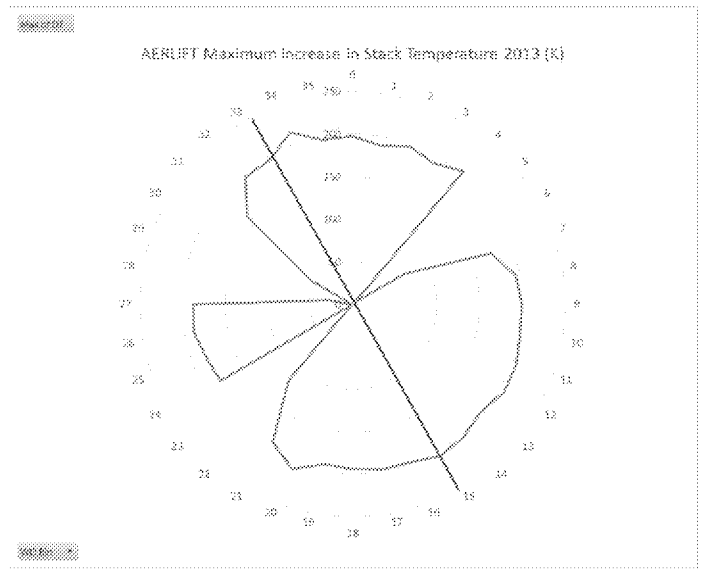
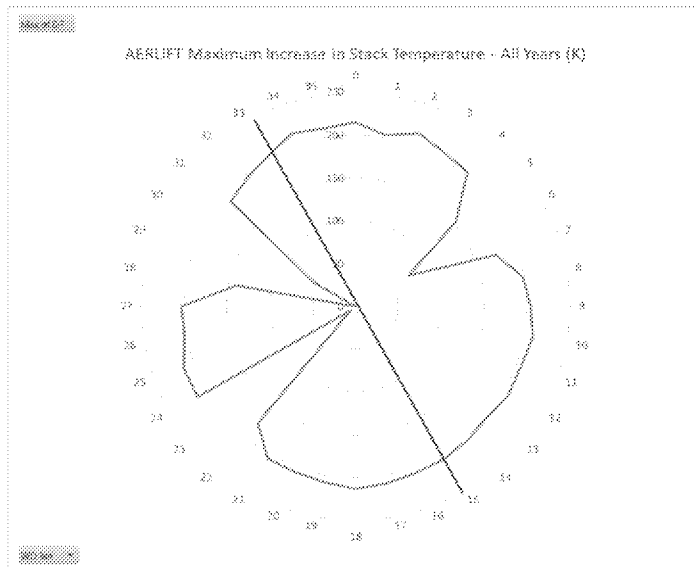
Hours which had missing or invalid stack or ambient meteorological data were removed from the dataset.

The average increase in temperature above the CEM measured temperature versus wind direction are shown below. The blue line denotes the stack alignment direction. With winds from the SE the enhancement of temperatures is roughly aligned with the line of stacks. However, for winds from the NW, the temperature augmentation appears to be bifurcated with one lobe at right angles to the line of stacks.



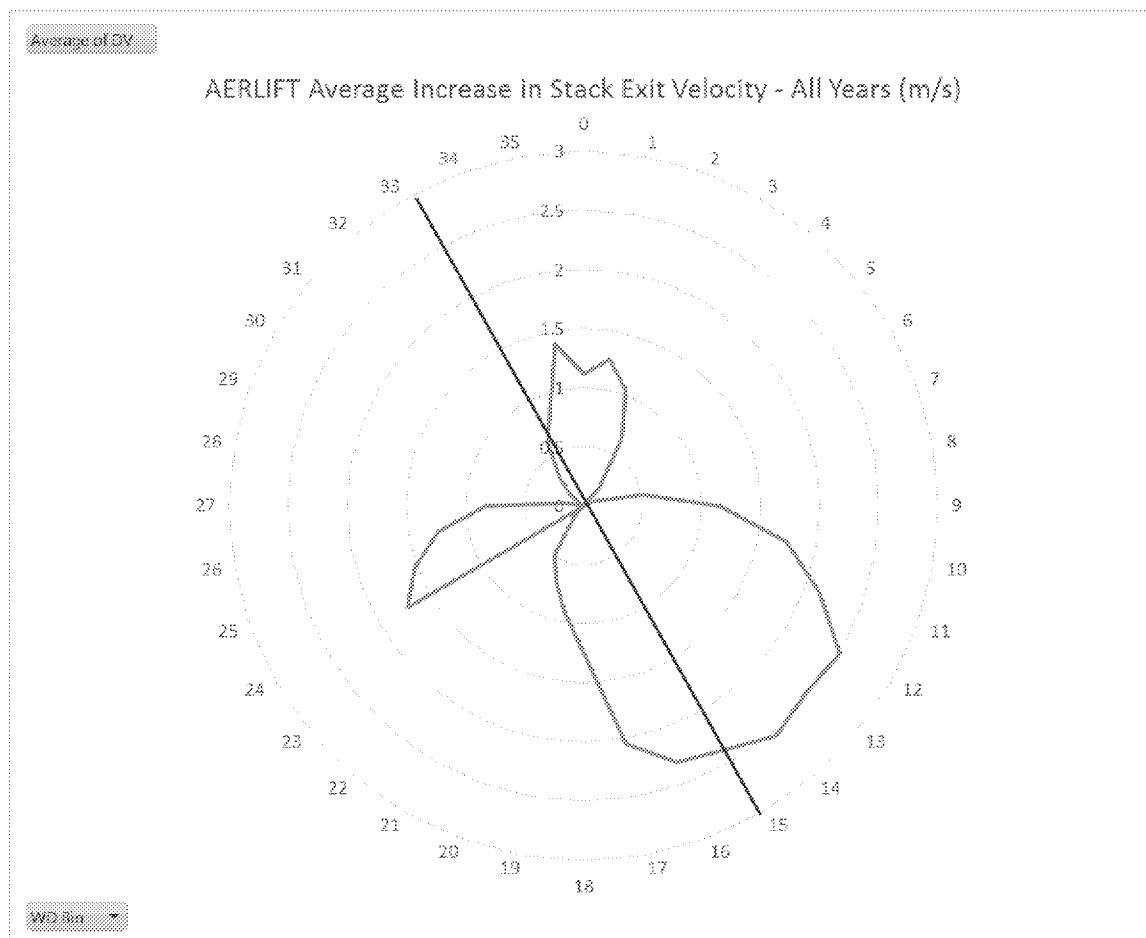
To examine how large a temperature increase could be for each direction a plot was made of the maximum temperature increase at any hour during the three-year period. Plots were made for each year in order to see if the directional dependence and magnitude of the maximum temperature increase were consistent from year to year.





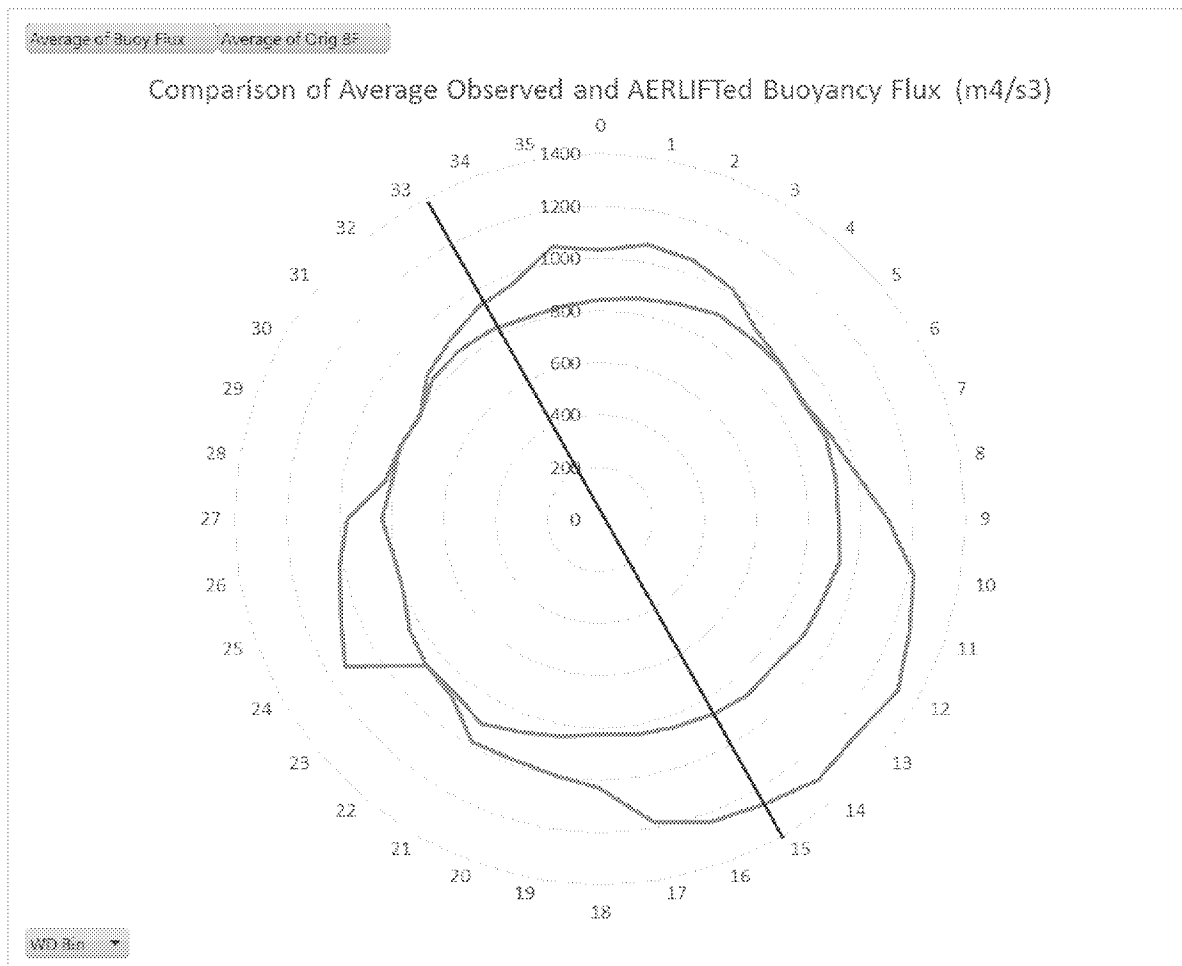
Comparison of the plots shows that the directional pattern of temperature enhancement is consistent from year to year and that the maximum increase of temperature is in excess of 200K.

As well as increasing the temperature, AERLIFT also increases the stack exit velocity. In the figure below the average increase in stack velocity is plotted versus wind direction.



The average stack velocity can be increased by up to 2.5 m/s for some directions. An examination of the maximum increase in velocity shows that it may be increased in excess of 6.5 m/s with a pattern similar to that in figure 2 for the maximum temperature increase.

Since the AERLIFTed change in temperature is also accompanied by an increase in exit velocity, the overall increase in buoyancy flux is greater than would be due to just the temperature increase alone. The Briggs buoyancy flux ( $F_b = g v_s d_s^2 \left( \frac{\Delta T}{4 T_s} \right)$ ) was calculated for each hour using both the original measured and the AERLIFTed stack parameters and the data were binned by wind direction in the same manner as for the temperature and velocity data. The averages for each bin are plotted below with the red line being the original  $F_b$  and the blue line being the AERLIFTed  $F_b$ .



Comparing the average AERLIFTed buoyancy to the original buoyancy the maximum average enhancement of about 50% is achieved for directions around the 120-140 degree bins; displaced from the expected peak at 151 degrees. The buoyancy enhancement in the reciprocal direction is somewhat less, the reason for which is not clear based on the documentation for the method. Also present is the off-line enhancement mode at 240 degrees.

## AERLIFT User control through Sprime

Modified June 5, 2014 (version 14156)

- ! 1. Allows users to input the high and low s-prime thresholds.
- ! S-prime is the theta angle dependent parameter at which enhancement
- ! occurs.
- ! The LOW value controls the value at which enhancement will ALWAYS occur.
- ! The HIGH value controls the start of enhancement ( $E = 1$ ). The program
- ! interpolates up to the highest possible value based on the theta angle.
- ! Theta angles which are closer to parallel ( $< 45$ ) with the stack alignment
- ! angle will enhance more.

From the AERLIFT.log file

-- ALIGNED SOURCE DATA --

-----

The following are the inline multi-stack sources:

50

51

These sources have a height of 121.9m  
and a diameter of 6.5m

The sources are aligned along 331.0ø from north

Alignment Angle + 180°: 151.0°

Low 90° Angle: 61.0°

High 90° Angle: 241.0°

The distance between stacks: 80.3m apart

-----

-- AERLIFT OPTIONS --

-----

Individual hourly enhancement factors used for  
aligned emission sources

AERLIFT run using USER-SPECIFIED S-prime thresholds

S-prime thresholds:

Low = 2.3

High = 3.3

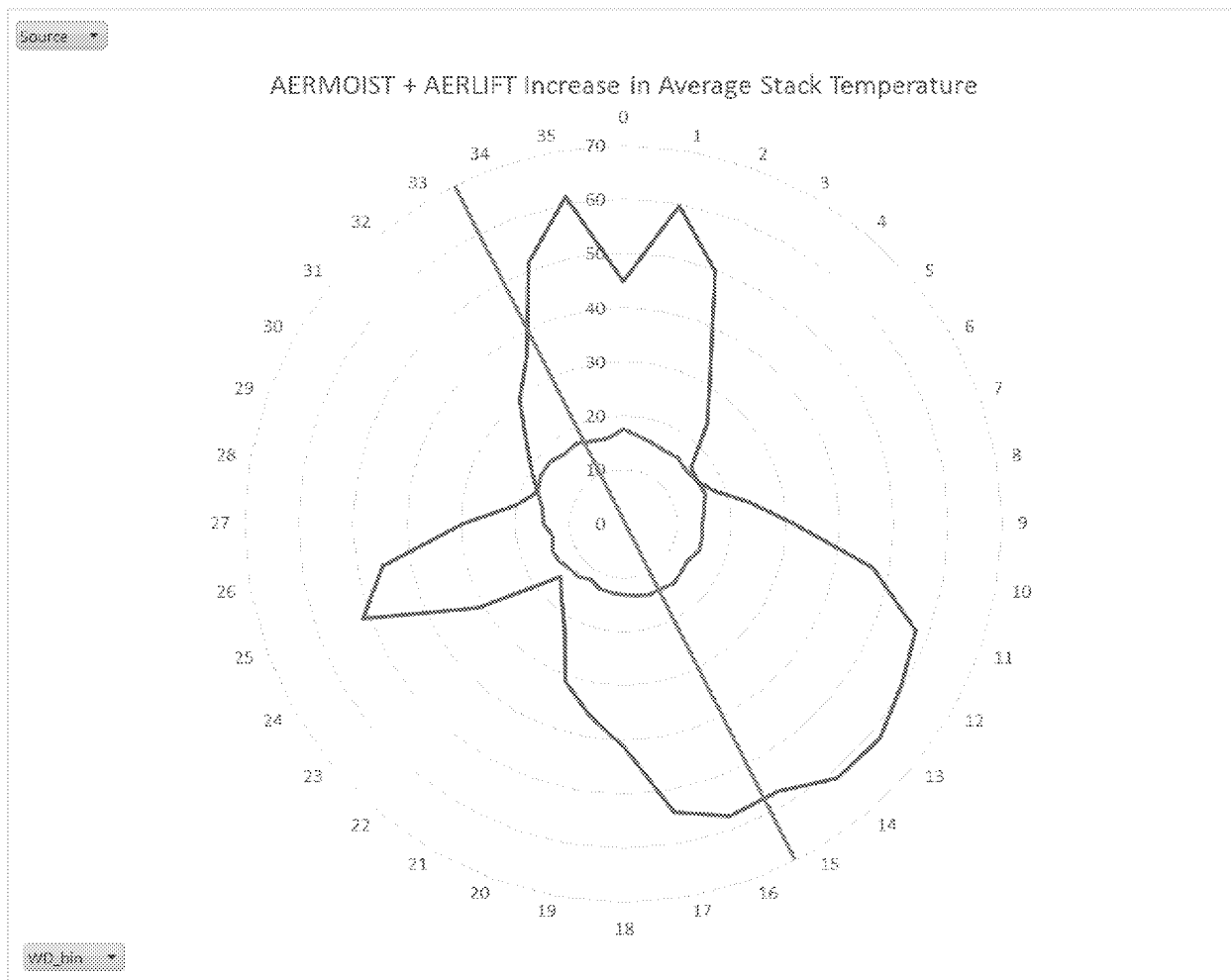
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Extract from the AERLIFT log file for Big Brown

## Martin Lake

Because Martin Lake uses wet FGD units to reduce SO<sub>2</sub> emissions the AERMOIST model was used to increase the buoyancy to account for the addition of latent heat in the initial phase of plume rise. Also, since it has three stacks in line, Martin Lake was modeled with both AERMOIST and AERLIFT. In this application, AERMOIST was applied first; hourly values were interpolated between the values derived from five model runs. AERLIFT was then applied to the emissions file resulting from the AERMOIST process.

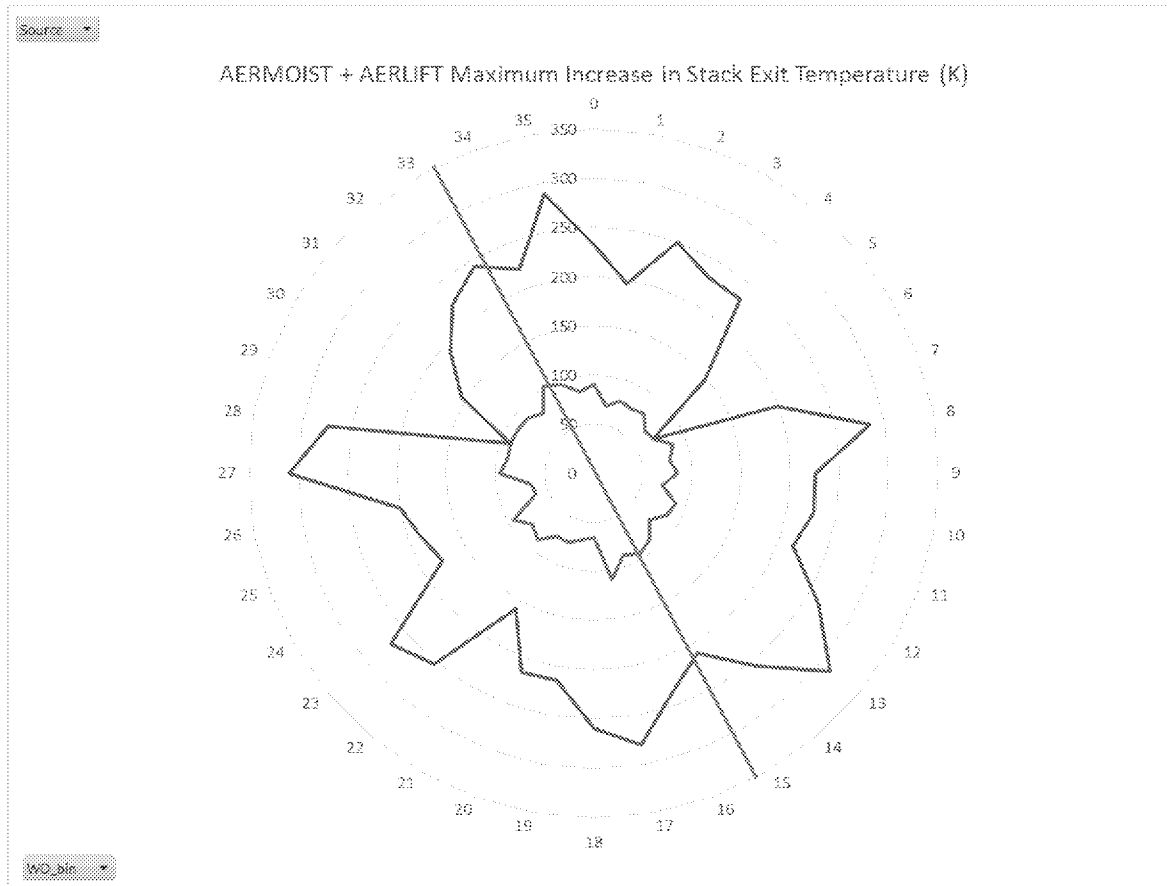
Because the two models are applied sequentially, an analysis can be made of the influence of each model separately. The results are available for AERMOIST alone and for AERMOIST followed by AERLIFT (AERMOIST+AERLIFT).



The average of the temperature increase vs. wind direction is given above with AERMOIST given in blue and AERLIFT+AERMOIST in red. As expected there is little wind direction dependency for AERMOIST and on the average AERMOIST adds about 15 degrees K to the measured stack temperature. The same wind direction dependence as found for Big Brown is apparent for Martin Lake when AERLIFT is added. Because the line of stacks is nearly the same direction (335 vs 331 degrees from N) the pattern is very similar. The same extra mode, this time

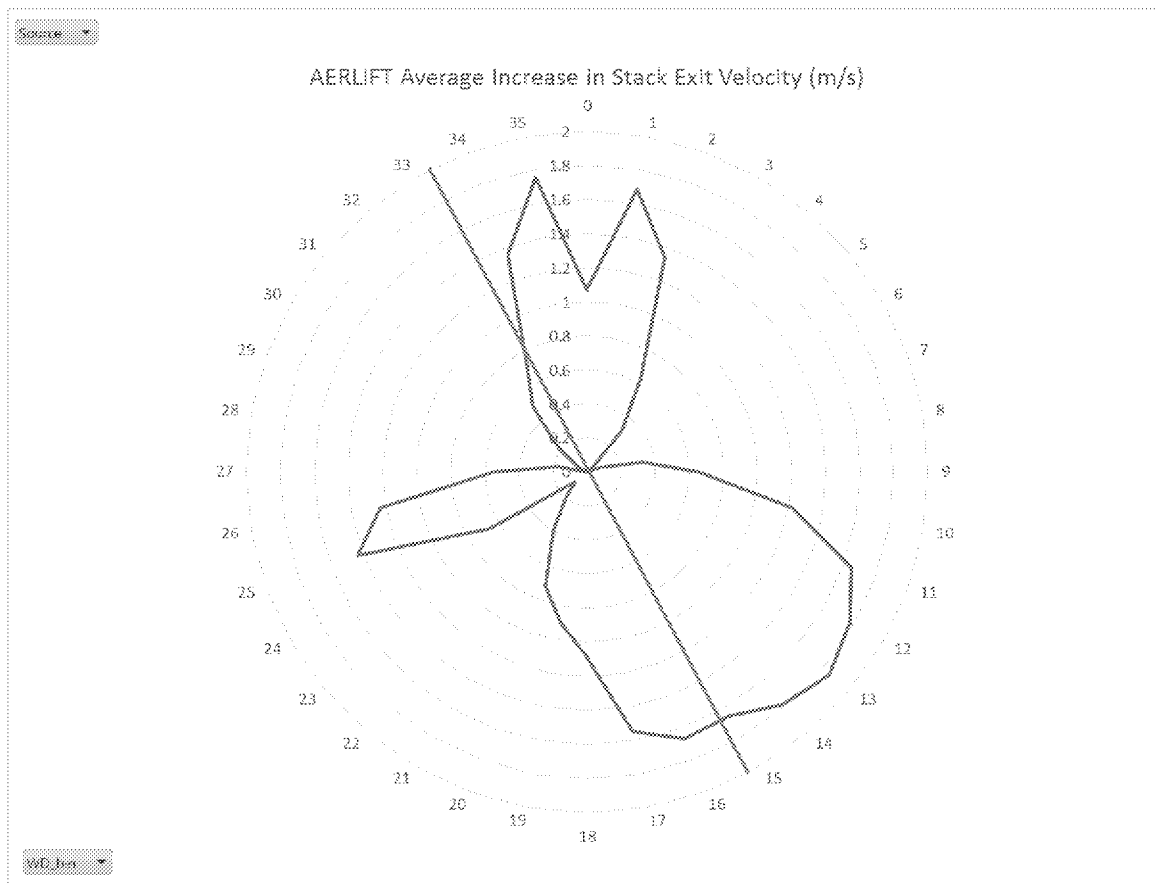
at about 250 degrees, is also present for Martin Lake. Overall, the greatest average enhancement of stack temperature for input to AERMOD is just over 60K.

The maximum increase of temperature for each direction is plotted below. The maximum temperature increase noted over the three year period due to AERMOIST was about 100C and for the combined application of the two models is just over 300K.

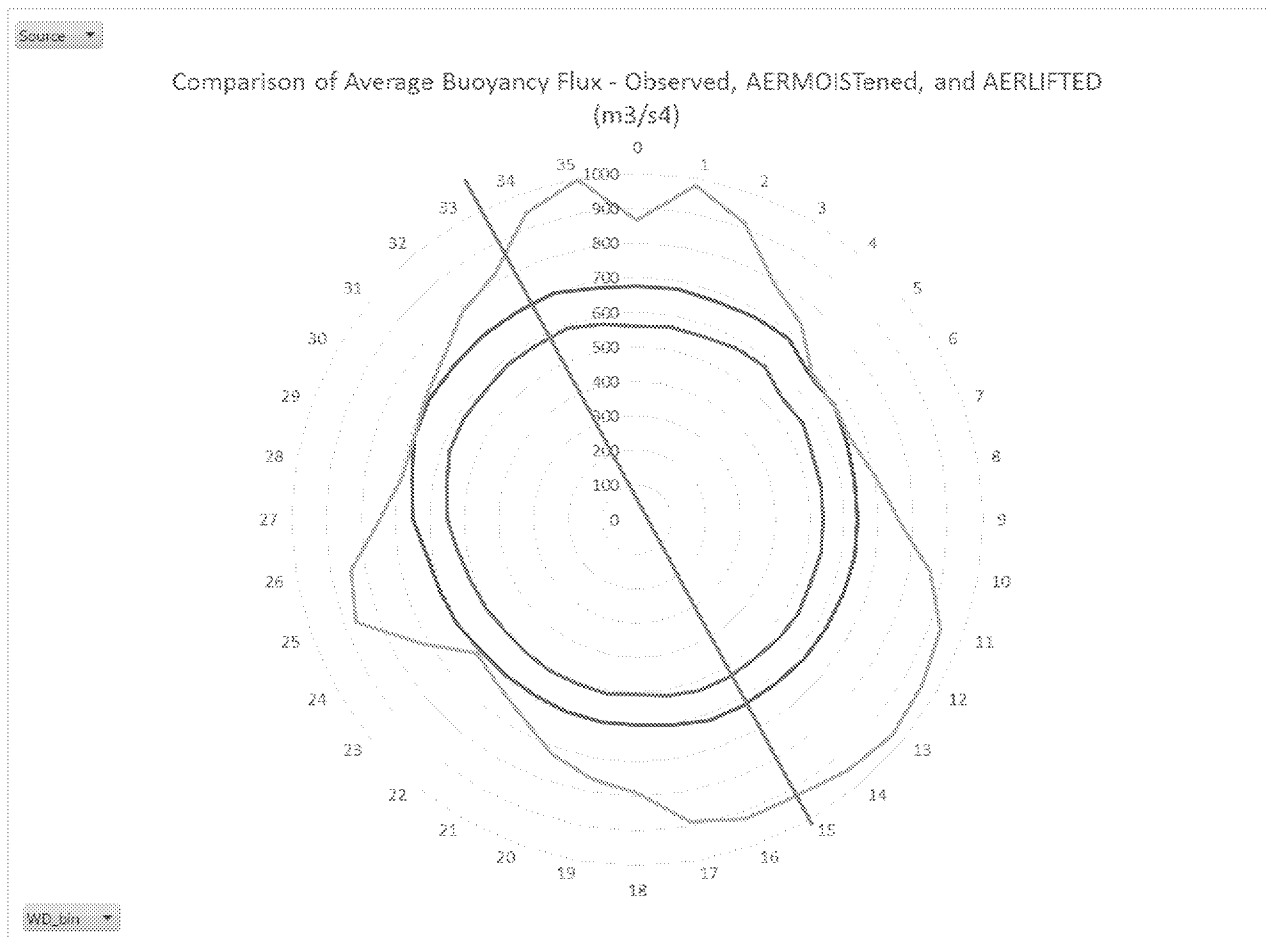


### Velocity

It was noted when comparing the velocities resulting from the application of the two preprocessor models that while AERLIFT increases both stack temperature and velocity, AERMOIST increases stack temperature alone. In the plot below the increase in velocity due to AERLIFT is plotted vs wind direction. The greatest increase in the average velocity is about 2 m/s.

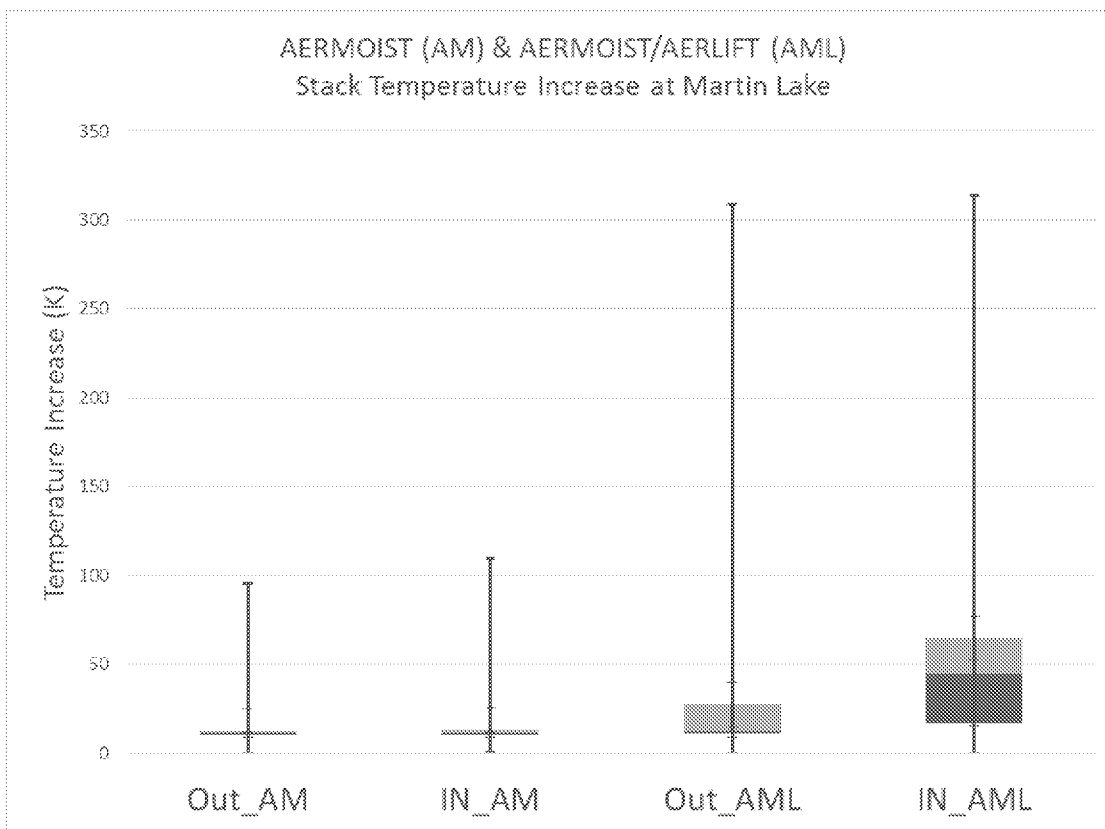


Buoyancy flux is plotted below vs wind direction for observed (blue), AERMOIST (red), and AERMOIST+AERLIFT (gray). As with Big Brown, the increase in the Briggs buoyancy flux at Martin Lake is due to both temperature and velocity boosts. The boost for AERMOIST is due to temperature alone and doesn't significantly vary with wind direction. The average buoyancy of the plume is increased about 15 % due to AERMOIST alone. The buoyancy increase by AERLIFT is in addition to that of AERMOIST and results in a further increase of the average buoyancy of the plume by about 50% - about the same percentage as was found at Big Brown. However, because these models are applied sequentially, the highest boost found in the average buoyancy is compounded to about 75%.



To look at the distribution of the temperature increase from the preprocessor models, a box and whisker plot is given below where the whiskers denote the minimum and maximum increases over the three-year period and the box denotes the 1st, 2nd, and 3rd quartiles. The statistics were compiled separately for wind directions in-line (in) with the stacks and not in-line (out) with the stacks and for AERMOIST alone (AM) and AERMOIST plus AERLIFT (AML). From the plot the frequency distribution of the stack temperature increases seems highly skewed to the right since the 3rd quartile is nearly the same as the median (2nd quartile) for the AERMOIST-only while the maximum is almost a factor of ten larger. For the AML treatment the 3rd quartile shows an increase both for In and Out indicating a fairly high frequency of modification by AERLIFT even when the plumes are not inline. In the extreme, AERLIFT is increasing the temperature by up to 300K even when the stacks are not inline. The median stack temperature increase is about 43K for a plume with the wind direction in-line and with AERMOIST and AERLIFT applied. The very highest temperature boosts are rare and it is currently unexplained the combination of circumstances that yield such exceptional temperature gains in the model.





The table below gives data for the 20 hours with the highest boosted temperatures. The three stacks are all represented. The CEM temperature and velocity are given as 'T' and 'Vel'; ambient data as 'WS', 'WD', and Temp\_amb. DT\_AM is the temperature increase due to AERMOIST and DT\_AML is the temperature increase due to AERMOIST+AERLIFT. Inline is true if the wind direction is within 45 degrees of the line of stacks and false otherwise. Most of the highest temperature increases from AERLIFT occur in the lightest wind speeds, during the winter, and for hours where you'd expect stable conditions (the exception being 1/15/13 10:00). These light wind speeds (although speeds would be somewhat higher at stack top) would enable each stack's plume to rise further before bending over to merge with downwind plumes. The highest temperature gains are found about as frequently for off-line winds as for in-line winds.

Date_ Time	Sour ce	T (K)	Vel	AM_ T (K)	AML _T (K)	AML_ Vel	W S	W D	Temp_ amb	WD_ bin	DT_A M	DT_A ML	Inli ne
<b>1/6/13 10:00</b>	S1	348. 000	31.3 60	420. 162	596. 15	37.35	0. 7	23 9	276.4	23	72.1 62	248.1 5	F
<b>3/7/14 7:00</b>	S2	358. 900	32.6 40	424. 47	607. 79	39.06	0. 77	85 77	272.5	8	65.5 7	248.8 9	F

Date_ Time	Sour ce	T (K)	Vel	AM_ T (K)	AML _T (K)	AML_ Vel	W S	W D	Temp_ amb	WD_ bin	DT_A M	DT_A ML	Inli ne
1/15/ 13 10:00	S2	347. 300	30.6 30	425. 561	597. 41	36.29	3. 27	24	272.5	2	78.2 61	250.1 1	F
12/10 /13 22:00	S1	359. 200	32.8 60	414. 64	611. 92	39.92	0. 6	22 2	271.4	22	55.4 4	252.7 2	F
12/11 /13 4:00	S1	348. 200	27.4 00	409. 464	603. 56	33.27	0. 53	13 6	269.9	13	61.2 64	255.3 6	T
1/20/ 13 7:00	S1	347. 200	27.8 30	412. 461	602. 66	33.64	0. 53	14 8	274.9	14	65.2 61	255.4 6	T
3/10/ 14 4:00	S2	367. 500	33.1 60	425. 4	626. 55	40.24	0. 6	18 6	279.9	18	57.9	259.0 5	T
1/7/1 3 8:00	S1	347. 900	31.0 90	413. 276	608. 65	37.73	0. 58	35 8	271.4	35	65.3 76	260.7 5	T
1/19/ 13 8:00	S2	347. 000	30.3 00	432. 5	610. 27	35.99	0. 86	12 3	273.1	12	85.5	263.2 7	T
1/6/1 3 10:00	S2	347. 300	29.4 40	428. 286	615. 02	35.28	0. 7	23 9	276.4	23	80.9 86	267.7 2	F
1/6/1 3 10:00	S3	345. 000	33.1 60	425. 524	614. 55	39.85	0. 7	23 9	276.4	23	80.5 24	269.5 5	F
3/7/1 4 7:00	S1	358. 800	31.9 10	432. 83	629. 65	38.49	0. 77	85	272.5	8	74.0 3	270.8 5	F
1/6/1 3 3:00	S1	347. 300	21.4 00	435. 95	621. 07	25.54	0. 7	28 1	274.2	28	88.6 5	273.7 7	F
1/7/1 3 8:00	S2	347. 700	28.4 40	419. 381	621. 52	34.62	0. 58	35 8	271.4	35	71.6 81	273.8 2	T
1/18/ 13 8:00	S2	347. 700	30.3 60	457. 456	628. 23	35.58	0. 75	17 9	272	17	109. 756	280.5 3	T
3/7/1 4 7:00	S3	358. 900	33.3 10	436. 96	644. 21	40.45	0. 77	85	272.5	8	78.0 6	285.3 1	F
1/7/1 3 8:00	S3	347. 400	33.8 00	420. 417	635. 63	41.56	0. 58	35 8	271.4	35	73.0 17	288.2 3	T
1/6/1 3 9:00	S3	344. 200	33.2 80	437. 151	645. 9	40.45	0. 77	27 9	274.2	27	92.9 51	301.7	F
1/6/1 3 9:00	S2	347. 800	29.7 50	443. 768	656. 98	36.2	0. 77	27 9	274.2	27	95.9 68	309.1 8	F

Date_ Time	Sour ce	T (K)	Vel	AM_ T (K)	AML _T (K)	AML_ Vel	W S	W D	Temp_ amb	WD_ bin	DT_A M	DT_A ML	Inli ne
<b>12/11 /13 4:00</b>	S2	356. 000	30.3 00	428. 594	669. 67	37.87	0. 53	13 6	269.9	13	72.5 94	313.6 7	T

An extract from the AERLIFT log file for Martin Lake

-----  
-- ALIGNED SOURCE DATA --  
-----

The following are the inline multi-stack sources:

S1  
S2  
S3

These sources have a height of 137.8m  
and a diameter of 7.0m

The sources are aligned along 335.0ø from north  
Alignment Angle + 180°: 155.0°  
Low 90° Angle: 65.0°  
High 90° Angle: 245.0°

The distance between stacks: 93.9m apart  
-----

-----  
-- AERLIFT OPTIONS --  
-----

Individual hourly enhancement factors used for  
aligned emission sources

AERLIFT run using USER-SPECIFIED S-prime thresholds  
S-prime thresholds:  
Low = 2.3  
High = 3.3  
-----

## Conclusion

For the two plants examined AERLIFT and AERMOIST can significantly increase the temperatures and velocities input to AERMOD and thus the plume buoyancies used for plume rise calculations. AERLIFT alone can increase stack temperatures by 200K and in combination with AERMOIST can increase temperatures by up to 300K. Significant boosts to the stack temperature by AERLIFT were found for directions not in-line with the stacks. The distribution of stack temperature increases is highly skewed with a few hours receiving increases up to five times the mean increase for a given direction. Velocities are increased by AERLIFT by up to 2 m/s and in combination with the stack temperature boosts can elevate the average buoyancy flux by up to 75% for favored wind directions. It is expected that these changes to the input parameters to AERMOD will significantly affect the design values modeled.

Message

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**From:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Sent:** 2/1/2018 5:12:10 PM  
**To:** Donaldson, Guy [Donaldson.Guy@epa.gov]  
**Subject:** FW: FYI - Upcoming briefing for Clint Woods on SO2 litigation

FYI – we had a call on Monday with OGC and OAQPS to explore the pathways to attainment.

---

**From:** Feldman, Michael  
**Sent:** Thursday, February 01, 2018 11:05 AM  
**To:** Olszewski, Joshua <olszewski.joshua@epa.gov>; Watson, Lucinda <watson.lucinda@epa.gov>  
**Subject:** FW: FYI - Upcoming briefing for Clint Woods on SO2 litigation

We will need to finalize our briefing sheet quickly and try to get on calendars to brief Wren and the RA.

Ruben/ Josh – please work to revise and clean up the briefing sheet and resolve Lucinda’s comments. Also follow-up with OAQPS and see what materials they plan to use for the briefing. To the extent possible, we should work together to develop the information.

We will need to describe clearly the considerations on reconsidering the initial designations, the path for CDD and redesignation/limited maintenance plan. And a separate section on technical needs (emission review, evaluation of existing modeling data, new modeling, other?)

Sorry for the additional fire drill. Seems like these briefings are coming fast for TX SO2, TX RH, TX transport, and St. Bernard

Thank you,

---

**From:** Casso, Ruben  
**Sent:** Thursday, February 01, 2018 10:51 AM  
**To:** Feldman, Michael <Feldman.Michael@epa.gov>  
**Subject:** FYI - Upcoming briefing for Clint Woods on SO2 litigation

I just got a call from OAQPS. They have been asked to prepare for a briefing for Clint Woods on where we are at with SO2 litigation. They said the main 2 pieces of litigation that need decisions are IL & TX. The briefing will likely be scheduled for week after next. The meeting invite should show up soon.

Wed Dec 20 15:19:56 EST 2017  
CMS.OEX@epamail.epa.gov  
FW: Supplement to Petition for Reconsideration and Stay, EPA-HQ-OAR-2014-0464, 81 Fed. Reg. 89,870 (Dec. 13, 2016)  
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

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**From:** Hope, Brian  
**Sent:** Wednesday, December 20, 2017 8:19:55 PM (UTC+00:00) Monrovia, Reykjavik  
**To:** CMS.OEX  
**Subject:** FW: Supplement to Petition for Reconsideration and Stay, EPA-HQ-OAR-2014-0464, 81 Fed. Reg. 89,870 (Dec. 13, 2016)

Hard copy to Ryan Jackson.

**From:** Barber, Julia [mailto:jbarber@balch.com]  
**Sent:** Tuesday, December 19, 2017 5:03 PM  
**To:** Pruitt, Scott <Pruitt.Scott@epa.gov>  
**Cc:** Wehrum, Bill <Wehrum.Bill@epa.gov>; 'Richard.hyde@tceq.texas.gov' <Richard.hyde@tceq.texas.gov>; Etchells, Elizabeth <Etchells.Elizabeth@epa.gov>; A-AND-R-DOCKET <A-AND-R-DOCKET@epa.gov>; 'Kelly, Dan' <dan.kelly@vistraenergy.com>; Gidiere, Stephen <SGidiere@balch.com>  
**Subject:** Supplement to Petition for Reconsideration and Stay, EPA-HQ-OAR-2014-0464, 81 Fed. Reg. 89,870 (Dec. 13, 2016)

Dear Administrator Pruitt:

Please find attached additional information in support of Vistra Energy Corp.'s February 13, 2017, petition for reconsideration and stay (Doc. ID EPA-HQ-OAR-2014-0464-0446) of the above-referenced final rule that I am submitting on behalf of my clients Vistra Energy Corp. and its subsidiaries Luminant Generation Company LLC, Big Brown Power Company LLC, Sandow Power Company LLC, and Luminant Mining Company LLC.

Please include this additional information in the docket for the above-captioned rulemaking.

Thank you,

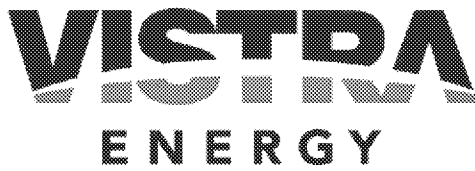
Julia Barber



Julia B. Barber, Attorney, Balch & Bingham LLP  
1901 Sixth Avenue North • Suite 1500 • Birmingham, AL 35203-4642  
t: (205) 226-8722 f: (205) 488-5710 e: [jbarber@balch.com](mailto:jbarber@balch.com)  
[www.balch.com](http://www.balch.com)

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DANIEL JUDE KELLY  
Vice President &  
Associate General Counsel  
Vistra Energy  
6555 Sierra Drive  
Irving, TX 75039  
o 214.812.7182

December 19, 2017

Sent via Certified U.S. Mail Return Receipt Requested and Email (Pruitt.Scott@epa.gov)

E. Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

RE: Additional Information in Support of Petition for Reconsideration and Administrative Stay—Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, 81 Fed. Reg. 89,870 (Dec. 13, 2016) (Docket No. EPA-HQ-OAR-2014-0464)

Dear Administrator Pruitt:

Thank you for your letter dated September 21, 2017, responding to the petition for reconsideration and administrative stay submitted by Vistra Energy Corp. ("Vistra"), Luminant Generation Company LLC ("Luminant"), and other Vistra subsidiaries on February 13, 2017, regarding the U.S. Environmental Protection Agency's ("EPA") final action entitled *Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County* ("Final Rule"), published at 81 Fed. Reg. 89,870 (Dec. 13, 2016). We are very encouraged that, as stated in your letter, EPA intends to undertake an administrative action with notice and comment to revisit the nonattainment designations in the Final Rule for portions of Freestone and Anderson Counties, Rusk and Panola Counties, and Titus County, Texas. We are writing to provide additional new information in support of our petition for reconsideration and to urge EPA to take prompt action to revisit and correct the nonattainment designations.

As you know, the Final Rule rejected the State of Texas's recommended designations for these three areas in Texas for the 2010 1-hour SO<sub>2</sub> National Ambient Air Quality Standard ("NAAQS"). Instead, the Final Rule adopted designations based solely on modeling simulations submitted by the Sierra Club. The three areas designated by EPA as nonattainment surround Luminant's Big Brown Power Plant, Martin Lake Power Plant, and Monticello Power Plant, respectively.

In addition to Vistra's petition, the Texas Commission on Environmental Quality ("TCEQ") submitted a petition for reconsideration to EPA on December 11, 2017. Vistra fully supports TCEQ's petition. As explained in Vistra's

and TCEQ's petitions, reconsideration is necessary so that the final designations may be based on SO<sub>2</sub> monitoring data collected by TCEQ, and not solely on Sierra Club's over-predictive modeling simulations. Moreover, as explained below and in TCEQ's petition, new information has become available that further supports reconsideration and warrants EPA's correction of these three nonattainment designations.

#### **RETIREMENT ANNOUNCEMENTS FOR MONTICELLO AND BIG BROWN REQUIRE CHANGE IN DESIGNATIONS**

First, Luminant has sought and obtained approval from the Electric Reliability Council of Texas ("ERCOT") to decommission and permanently retire the Monticello Plant and the Big Brown Plant, which are the two stationary sources that Sierra Club claimed to cause nonattainment in Titus County and Freestone and Anderson Counties, respectively. Once retired, these units will have zero SO<sub>2</sub> emissions.

As to Titus County, on October 6, 2017, Luminant submitted a Notice of Suspension of Operations ("NSO") to ERCOT to permanently retire all three units at the Monticello Plant as of January 4, 2018.<sup>1</sup> On October 27, 2017, ERCOT issued its Final Determination on the NSO, finding that the plant is not required for Reliability Must Run ("RMR") service and clearing Luminant to decommission and permanently retire the Monticello Plant according to the schedule in the NSO.<sup>2</sup>

As to Freestone and Anderson Counties, Luminant submitted an NSO to ERCOT on October 13, 2017, to permanently retire both units at the Big Brown Plant as of February 12, 2018.<sup>3</sup> On November 6, 2017, ERCOT issued its Final Determination clearing that retirement as well.<sup>4</sup>

Given these retirements and the source-specific nature of the SO<sub>2</sub> designations, the nonattainment designations for Titus County and Freestone and Anderson Counties are in error and should be changed. Sierra Club's modeling simulations—EPA's sole rationale for the nonattainment designations—were based on the assumption that the Monticello Plant and the Big Brown Plant would continue to operate, an assumption that is in error. These units will have zero SO<sub>2</sub> emissions following their retirement. There is thus no basis for the designations and no reason for TCEQ to expend resources developing a state implementation plan ("SIP") submission to address these erroneous designations. Because a nonattainment designation carries with it additional permitting requirements for new sources seeking to locate in these areas, the erroneous nonattainment designations will also needlessly impede economic activity in these communities. Additionally, if EPA does not correct the nonattainment designations now, EPA's own resources will be expended unnecessarily in reviewing SIP revisions, reclassifying the area to attainment at a later date, and continuing to work with TCEQ on maintenance planning that will extend for years after redesignation. Rather than waste limited agency resources in this manner, the designations for these areas should be corrected now, and these two areas should be designated as attainment or, at a minimum, unclassifiable.

---

<sup>1</sup> ERCOT, Notice of Suspension of Operations of a Generation Resource, Monticello SES (Oct. 6, 2017), [http://www.ercot.com/services/comm/mkt\\_notices/archives/1528](http://www.ercot.com/services/comm/mkt_notices/archives/1528).

<sup>2</sup> ERCOT, Notice of Suspension of Operations Initial and Final Determination, Monticello Unit 1, Unit 2, Unit 3 (Oct. 27, 2017), [http://www.ercot.com/services/comm/mkt\\_notices/archives/1555](http://www.ercot.com/services/comm/mkt_notices/archives/1555).

<sup>3</sup> ERCOT, Notice of Suspension of Operations of a Generation Resource, Big Brown SES (Oct. 13, 2017), [http://www.ercot.com/services/comm/mkt\\_notices/archives/1537](http://www.ercot.com/services/comm/mkt_notices/archives/1537).

<sup>4</sup> ERCOT, Notice of Suspension of Operations Initial and Final Determination, Big Brown Unit 1 and Unit 2 (Nov. 6, 2017), [http://www.ercot.com/services/comm/mkt\\_notices/archives/1565](http://www.ercot.com/services/comm/mkt_notices/archives/1565). Luminant initially explored a sales process for the Big Brown Plant, but that process is complete and Luminant has determined to retire Big Brown in accordance with the schedule in the NSO and not to sell it.



## DEPLOYMENT OF ADDITIONAL AIR MONITORING STATIONS SUPPORT UNCLASSIFIABLE DESIGNATIONS

Second, the recent deployment of additional air monitoring stations by TCEQ near the Martin Lake Plant and the Big Brown Plant warrant reconsideration and correction of the designations for Rusk and Panola Counties and Freestone and Anderson Counties. As explained in the petition for reconsideration, TCEQ developed and submitted to EPA Monitor Placement Evaluation Reports for the placement and operation of source-oriented air quality monitoring stations in the three areas at issue.<sup>5</sup> In two of the areas, monitors have been deployed and are now operational. The monitor for the Martin Lake Plant (CAMS 1082) was installed by TCEQ approximately 2.2 kilometers downwind of the plant to the north based on predominant wind direction, and the monitor for the Big Brown Plant (CAMS 1084) was installed by TCEQ approximately 5.2 kilometers to the southwest of that plant.

The actual data from these monitors will provide more reliable evidence of actual air quality conditions than Sierra Club's modeling simulations, and EPA should have afforded TCEQ the opportunity to collect the necessary three-years-worth of data before a nonattainment designation is considered. In making NAAQS designations, sound science and policy favor collecting actual monitoring data before making a nonattainment designation. But in the case of these three Texas designations, the timing of the designations was driven by a consent decree that EPA previously entered into with Sierra Club (that neither the State of Texas nor Luminant were a party to). The deadlines in that consent decree did not provide the State with the opportunity to collect actual data to support designations. The State has since deployed monitoring systems consistent with EPA's stated desire to make designations based on monitoring data where it exists, not based on modeling simulations. The Final Rule failed to do this and should be corrected for that reason. The deployment of monitors at Martin Lake and Big Brown warrant correction of these two nonattainment designations to unclassifiable so that the State can continue to collect additional data to determine the attainment status of the area.

## CONSERVATION OF AGENCY AND STAKEHOLDER RESOURCES AND JUDICIAL ECONOMY SUPPORT A NEW RULEMAKING

In addition, we urge EPA to undertake its notice-and-comment action to revisit the Final Rule *promptly* and without further delay. As your letter recognizes, prompt action is necessary to alleviate associated and pending planning obligations on the State of Texas. Your letter (at 1) committed to providing "clarity regarding any potential changes *before* the state or regulated entity expend resources investing in regulatory obligations that are currently required." (emphasis added). Without prompt action to correct the erroneous designations, Texas must commit significant resources to develop and promulgate a nonattainment SIP revision. Such a SIP is counterproductive and unnecessary, given that the sources in two of the three areas will be retired prior to the SIP submission date, and monitors have been deployed to collect actual air quality data upon which final designations can be made.

Further, the designations should be corrected now to provide the State with sufficient time to collect monitoring data *prior to* developing a SIP revision, even if one is ultimately necessary. In the event a SIP revision is necessary for one of these areas based on the results of the actual monitoring data, it would conserve both TCEQ and EPA resources if the State is allowed to develop a targeted SIP based on that actual monitoring data, and not over-predictive modeling. Monitoring data will focus and inform the State's development of a SIP

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<sup>5</sup> See TCEQ, Annual Monitoring Network Plan (2017), available at [https://www.tceq.texas.gov/assets/public/compliance/monops/air/annual\\_review/historical/2017-AMNP.pdf](https://www.tceq.texas.gov/assets/public/compliance/monops/air/annual_review/historical/2017-AMNP.pdf).

revision, streamline EPA's review of that revision, and ensure that any required emission reductions do not over-control.

Prompt action by EPA is also necessary to avoid the burden and uncertainties of litigation over the Final Rule. All petitions for review of the Final Rule (which were filed by the State of Texas, Luminant, and Sierra Club) are presently consolidated before the U.S. Court of Appeals for the Fifth Circuit, following the court's denial of EPA's motion to transfer to the D.C. Circuit the petitions for review filed by the State of Texas and Luminant. *See State of Texas et al. v. EPA et al.*, No. 17-60088 (5th Cir.). The D.C. Circuit has, in turn, transferred to the Fifth Circuit the petitions for review originally filed in that court. The Fifth Circuit is presently holding the petitions in abeyance based on EPA's representation that it intends to revisit the Final Rule. However, the court was clear that any party may seek to end the stay if developments warrant. EPA must file a status report with the court by January 11, 2018, in which it must update the court on the status of its reconsideration proceeding. We urge EPA to initiate its notice-and-comment action prior to that date, so that the parties are not compelled to seek an end to the litigation stay in light of the impending deadlines in the Final Rule.

Again, thank you for your letter of September 21, 2017, and your commitment to revisit these three Texas designations. We look forward to participating in the upcoming notice-and-comment action by EPA and to providing additional information to support correction of these three designations. In the meantime, please contact me if I can provide any further information.

Sincerely,



Daniel Jude Kelly  
VP & Associate General Counsel

cc: Richard Hyde, Executive Director, TCEQ  
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA

Message

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**From:** Donaldson, Guy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2A0969773664CC3B6EB1208748F1A5D-DONALDSON, GUY]  
**Sent:** 2/5/2018 10:30:30 PM  
**To:** Price, Lisa [Price.Lisa@epa.gov]  
**CC:** Feldman, Michael [Feldman.Michael@epa.gov]; Stanton, MaryA [Stanton.Marya@epa.gov]  
**Subject:** Air Program sheets for the congressional meeting with the RA  
**Attachments:** TX SO2 Petitions-factsheet-2-5-18.docx; St Bernard SO2 Fact Sheet for RA 02052018.docx; TX RH Background and Status fact sheet 2\_5\_18.docx; AR Regional Haze\_Fact Sheet\_2\_5\_2018.docx; Status Report-Denka Jan 31 2018 (002).docx

# TEXAS

State Profile	
Governor	Greg Abbott (R)
Attorney General	Ken Paxton (R) (elected)
Legal Issues	Texas challenged one or more of EPA's GHG Endangerment-Vehicle-Permitting Actions, as well as the Clean Power Plan, the Mercury Air Toxics Rule, Clean Air Act ozone attainment designations, the CAA Startup, Shutdown or Malfunction Rule, Clean Air Act standards for sulfur dioxide, the Texas Regional Haze rule and challenged EPA disapproval of Oklahoma and Texas' CAA implementation plans.
Key Agencies	<p>Texas Commission on Environmental Quality <i>Bryan W. Shaw, Chairman</i></p> <p>Texas Department of State Health Services <i>John Hellerstedt, Commissioner</i></p> <p>Texas Department of Agriculture <i>Sid Miller, Commissioner</i></p> <p>Texas State Soil and Water Conservation Board <i>Scott Buckles, Chairman</i></p> <p>Texas General Land Office <i>George Prescott Bush, Commissioner</i></p> <p>Texas Railroad Commission <i>Christi Craddick, Chairman</i></p> <p>Texas Water Development Board <i>Bech Bruun, Chairman</i></p>
Key Issues	<ul style="list-style-type: none"> <li><b>Clean Air Act SIP Approvals</b> – EPA issued a FIP in <u>October 2016 to address BART for EGUs. This FIP was developed in consultation with TCEQ with hopes that TCEQ would adopt a SIP to replace the FIP. The FIP has drawn litigation and EPA will have to re-propose. Other</u></li> </ul>

# TEXAS

aspects of the Regional Haze action have been remanded to EPA for action which will have to be addressed at a future date. EPA approved the Texas Plan to replace the Federal FIP for Regional Haze to address best available retrofit technology (BART) and the plan is being challenged in court. EPA is also working with Texas to address start-up/shut down and malfunction. EPA intends to propose approval of TCEQ's plans to address the 2008 ozone standard in Dallas-Fort Worth and Houston. EPA proposed that these areas be nonattainment under the 2015 standard in agreement with TCEQs recommendations and will make a final decision by April 30, 2018. EPA also must decide the attainment status of the San Antonio area by July 17, 2018. Texas continues to address attainment in Dallas-Fort Worth and Houston regarding the new 2015 ozone air quality standard.

- **Clean Water Act Compliance** - EPA and the State of Texas are working on large CWA Consent Decrees that will help improve water quality in near coastal waters in the Gulf. These Agreements were delayed due to Hurricane Harvey and negotiations are being re-started. Under a proposed agreement, both Houston (\$5 billion over 22 to 27 years) and Corpus Christi (\$885 million over 30 years) would have court approved schedules for completing work to prevent sanitary Sewer overflows in the future.
- **Donna Canal Superfund Site** – The site is located in Hidalgo County, Texas, near the Texas/Mexico border. The state authorized Irrigation District pumps water from the Rio Grande River and transfers the water through several miles of canals for irrigation and drinking water supply. The canal system is contaminated with polychlorinated biphenyls in the water column, sediment, and fish. Extensive EPA studies have identified the source of contamination as a large, 90-year-old 1,200-foot-long, underground pipe. EPA expects to issue a proposed plan of action for public input later this year and is working with Texas, the potentially responsible party, to obtain funding authorization from the state legislature to address the cleanup.
- **EDF Petition to Withdraw Texas' Federally Approved/Authorized Permitting Programs** On January

# TEXAS

11, 2016, the Environmental Defense Fund and Caddo Lake Institute filed a Petition for Administrative Action with EPA Region 6 asking EPA to withdraw National Pollutant Discharge Elimination System (NPDES) permitting authority under the Clean Water Act (CWA) from the Texas Commission on Environmental Quality (TCEQ) and requesting that EPA find Texas's new source review (NSR) permitting program under the Clean Air Act (CAA) substantially inadequate. There is no statutory or regulatory deadline to complete the informal investigation. At some point the Petitioners may seek to have the Federal Court set a schedule for an EPA decision on the petitions.

- **Unincorporated Texas Communities** - In Texas, there are 555 colonias which lack adequate road paving, drainage or solid waste disposal. An additional 337 lack access to potable water, adequate wastewater disposal, or are unplatted. This amounts to 153,842 people experiencing infrastructure challenges that could lead to serious environmental health risks. EPA is working side by side with state, federal, local and NGOs in creating strategic /implementation plans to address drinking water and waste water issues; flood-related septic tank challenges; emergency preparedness; and superfund outreach and public engagement challenges.
- **Intended Air Quality Designations for the 2015 Ozone Standard** - EPA plans to make final designations by April 30, 2018. EPA received area designation recommendations from all Region 6 states, but no tribal recommendations. Texas recommended 2 counties in the Houston area and 1 county in the Dallas/Fort Worth area be removed, and Bexar County in the San Antonio area, El Paso County and remainder of Texas as attainment, and attainment/unclassifiable.
- **San Jacinto Superfund Site** is situated east of Houston, Texas. Pits were built in the mid-1960s along the banks of the San Jacinto River and used for disposal of pulp wastes containing dioxins. The waste pits are partially submerged in the river due to regional subsidence. A temporary armored cap was completed in 2011 under an EPA order to prevent continuing releases and direct contact with waste material. The ROD was signed in November and the PRPs signed an agreement to

# TEXAS

complete the Remedial Design. The site was removed from the Administrator's priority action list on April 16, 2018.

- **Waste Control Specialists, Andrews County Texas** - In April 2014, transuranic (TRU) waste mixed with hazardous waste was shipped from Los Alamos National Lab (LANL) to Waste Control Specialists (WCS) in Andrews County, Texas, for temporary storage. WCS is a commercial waste transfer, treatment, storage and disposal facility located about 30 miles west of the town of Andrews near the Texas/New Mexico border. WCS is about 100 miles from the Waste Isolation Pilot Plan (WIPP) in Southeastern New Mexico. This waste would normally have been shipped directly to WIPP for emplacement; however, WIPP had been closed due to a radiation release in February 2014. The final shipment of waste was shipped to WIPP on April 15, 2018. All shipments will be escorted by DOE, and shipments are expected to be completed in two weeks once they begin. WCS is regulated by the Texas Commission on Environmental Quality (TCEQ) through their hazardous waste program and by the Nuclear Regulatory Commission. EPA's role is oversight of the TCEQ hazardous waste program.
- **Water Infrastructure Needs information** - EPA conducts an assessment of infrastructure needs to support the CWA and SDWA Revolving Loan Funds. These estimates are updated regularly on a four - year cycle. The most recent Report to Congress 2012 for CWA and 2011 for SDWA indicate the following. (Needs are shown in millions of US dollars.)

STATE	CWA	SDWA
Texas	\$11,830	\$33,892

Message

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**From:** Donaldson, Guy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2A0969773664CC3B6EB1208748F1A5D-DONALDSON, GUY]  
**Sent:** 7/2/2018 6:02:48 PM  
**To:** Rhea, William [Rhea.William@epa.gov]  
**Subject:** RE: SOx Nonattainment

We currently have five SO2 nonattainment areas:

- 1) St Bernard Parish Louisiana
- 2) Evangeline Parish, LA A small area in the vicinity of Cabot
- 3) An area in the vicinity of Luminant's Big Brown facility
- 4) An area in the vicinity of Luminant's Monticello facility
- 5) An area in the vicinity of Luminant's Martin Lake facility.

(note the designations for the three areas in Texas are expected to be reconsidered, though this is not public knowledge yet. Also, Big Brown and Monticello have shut down, so there really isn't an actual problem in those areas, anymore)

Mark only lists ozone.

In addition to ozone and SO2, we have PM-10 nonattainment in El Paso

---

**From:** Rhea, William  
**Sent:** Monday, July 02, 2018 9:44 AM  
**To:** Donaldson, Guy <Donaldson.Guy@epa.gov>  
**Subject:** SOx Nonattainment

Are there any SOx nonattainment or near nonattainment areas in R6?

Any nonattainment areas besides the ozone nonattainment that Mark sends out weekly?



Message

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**From:** Donaldson, Guy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2A0969773664CC3B6EB1208748F1A5D-DONALDSON, GUY]  
**Sent:** 4/19/2018 1:11:21 PM  
**To:** Price, Lisa [Price.Lisa@epa.gov]  
**Subject:** FW: Latest copy of Briefing materials for Rounds 2 & 3 SO2 litigation briefing  
**Attachments:** SO2Rnd23LitigationSummary.docx; SO2 Round 2&3 Petition Decision Briefing for OAR.docx; TX SO2 Nontattainment Area Options3-7-18.docx

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**From:** Casso, Ruben  
**Sent:** Thursday, April 19, 2018 7:25 AM  
**To:** Donaldson, Guy <Donaldson.Guy@epa.gov>; Feldman, Michael <Feldman.Michael@epa.gov>  
**Subject:** Latest copy of Briefing materials for Rounds 2 & 3 SO2 litigation briefing

I saw that these have not been officially sent out. Got these versions off the HQ Sharepoint site. I added our previous R6 CDD/Redesignation fact sheet in case somebody on the call brings up either of those options.

Message

**From:** Donaldson, Guy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2A0969773664CC3B6EB1208748F1A5D-DONALDSON, GUY]  
**Sent:** 9/24/2018 12:27:03 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** RE: Review Requested by Wed 9/26: Updated nonattainment area projections for redesignation effective dates in FY2019 to FY2022

I'm not going to sweat the 2022 dates.

---

**From:** Feldman, Michael  
**Sent:** Friday, September 21, 2018 3:38 PM  
**To:** Donaldson, Guy <Donaldson.Guy@epa.gov>  
**Subject:** FW: Review Requested by Wed 9/26: Updated nonattainment area projections for redesignation effective dates in FY2019 to FY2022

Guy – I thought we were not going to include any dates for our areas. There are two Region 6 areas in the table with projected dates. Titus County is Monticello power which is shutdown. Should both of these be removed (my preference since you never know what can happen in LA) or just the Titus County entry.

SO2 (2010) St. Bernard Parish LA 6 Yes 9/30/2022 9/30/2022 Yes  
SO2 (2010) Titus County TX 6 Yes 9/30/2022 9/30/2022 No Data

Thanks,

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**From:** Perez, Idalia  
**Sent:** Friday, September 21, 2018 11:05 AM  
**To:** Air Division Directors and Deputies <Air\_Division\_Directors\_and\_Deputies@epa.gov>; Aburano, Douglas <aburano.douglas@epa.gov>; Algae-Eakin, Amy <Algae-Eakin.Amy@epa.gov>; Benjamin, Lynorae <benjamin.lynorae@epa.gov>; Bhesania, Amy <Bhesania.Amy@epa.gov>; Biton, Leiran <biton.leiran@epa.gov>; Blakley, Pamela <blakley.pamela@epa.gov>; Bonifacino, Gina <Bonifacino.Gina@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>; Conroy, David <Conroy.Dave@epa.gov>; Davis, Scott <Davis.ScottR@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Feldman, Michael <Feldman.Michael@epa.gov>; Garcia, Ariel <Garcia.Ariel@epa.gov>; Huey, Joel <Huey.Joel@epa.gov>; Jackson, Scott <Jackson.Scott@epa.gov>; Jay, Michael <Jay.Michael@epa.gov>; Kurpius, Meredith <Kurpius.Meredith@epa.gov>; Lee, Anita <Lee.Anita@epa.gov>; Lo, Doris <Lo.Doris@epa.gov>; Mastro, Donna <Mastro.Donna@epa.gov>; Mooney, John <Mooney.John@epa.gov>; Nazmi, Niloufar <Nazmi.Niloufar@epa.gov>; Nelson, Diane <nelson.diane@epa.gov>; Perez, Idalia <Perez.Idalia@epa.gov>; Ruvo, Richard <Ruvo.Richard@epa.gov>; Spielberg, Susan <spielberger.susan@epa.gov>; Stanton, MaryA <Stanton.Marya@epa.gov>; Suzuki, Debra <Suzuki.Debra@epa.gov>; Wieber, Kirk <Wieber.Kirk@epa.gov>; Zimpfer, Amy <Zimpfer.Amy@epa.gov>  
**Cc:** Bracht, Megan <Bracht.Megan@epa.gov>; Stackhouse, Butch <Stackhouse.Butch@epa.gov>; Whitlow, Jeff <Whitlow.Jeff@epa.gov>  
**Subject:** Review Requested by Wed 9/26: Updated nonattainment area projections for redesignation effective dates in FY2019 to FY2022

ADDs and Planning APMs,

Attached is a table the updated redesignation projections, as provided by APMs to Butch Stackhouse earlier this month. Please review the table and let me and Butch know by COB Wednesday 9/26/2018 if you see errors in the table.

Thanks,

-Idalia

---

Idalia M. Pérez, Ph.D. | OAR Lead Region Coordinator  
U.S. Environmental Protection Agency – Region 9  
75 Hawthorne St. (AIR-1), San Francisco, CA 94105  
P: 415.972.3248 | email: [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov)  
[OAR Lead Region SharePoint Site](#)

**Our mission is to protect human health and the environment.**

Message

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**From:** Donaldson, Guy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2A0969773664CC3B6EB1208748F1A5D-DONALDSON, GUY]  
**Sent:** 3/14/2018 3:28:02 PM  
**To:** Price, Lisa [Price.Lisa@epa.gov]  
**Subject:** TX SO2 designations and Petitions-factsheet-3-12-18.docx  
**Attachments:** TX SO2 designations and Petitions-factsheet-3-12-18.docx

I tweaked it but I don't know if it helps.

## REGION 6 EXECUTIVE SUMMARY

TOPIC: 2010 SO<sub>2</sub> - Texas Petition for Reconsideration/Redesignation

DATE: March 13, 2018

CONTACT: Ruben Casso 5-6763

PURPOSE/ACTION NEEDED: For Information

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### BACKGROUND:

- Round 2, 2010 1-hr SO<sub>2</sub> NAAQS designations were effective January 12, 2017.
- 2010 1-hr SO<sub>2</sub> NAAQS Nonattainment designations (Round 2) for areas in Texas were based on air quality modeling performed by Sierra Club, which generally followed EPA guidance.
- Although Luminant also submitted modeling, the analysis was rejected because it relied on unapproved and technically unreliable algorithms.
- Texas did not submit any modeling; instead arguing that modeling should not be used for designations and that the areas should be designated unclassifiable/attainment because current monitoring data show no violations. Note, at the time of designations, no monitors were being operated in locations likely to pick up these facility's maximum impacts.
- Luminant requested reconsideration on the basis of: (a) necessity of monitoring data, proposed new monitoring, and recent emission declines, and (b) failure to provide notice and comment on modeling used as basis for designation.
- In response, on September 21, 2017, we sent a letter stating our intent to "revisit" designations. The letter states: "[W]e intend to undertake administrative action with notice and comment revisit the nonattainment designation for the portions of Freestone and Anderson Counties, Rusk and Panola Counties and Titus County." The letter goes on to say: "While the designations for these areas remain effective, the EPA is considering a variety of administrative options for revisiting them, some of which may alleviate associated and pending planning obligations. It is our intent to provide clarity regarding any potential changes before the state or regulated entity expend resources investing in regulatory obligations that are currently required."
- On December 11, 2017, the Texas Commission on Environmental Quality (TCEQ) submitted a petition for reconsideration regarding SO<sub>2</sub> designations for four areas in Texas where Luminant power plants were the sources which triggered the designations. The petition noted new information regarding shutdowns of three of the four sources.
- EPA's nonattainment SO<sub>2</sub> designations are currently being challenged in the 5<sup>th</sup> Circuit Court of Appeals and is currently in abeyance pending administrative action by EPA (while challenges to other areas move forward in the D.C. Circuit). Status reports are due every 90 days (next due March 12, 2018).

### CURRENT STATUS:

- The following table summarizes the relevant facilities, their operating status and the SO<sub>2</sub> designations:

Area	SO <sub>2</sub> Designation	Relevant Facility	Operating Status	Air Monitor
Titus County (p)	Nonattainment	Monticello	Shut Down 1/4/18	No monitor
Milam County	Unclassifiable	Sadow	Shut down 1/11/18	DRR monitor Activation date 11/19/2016
Freestone (p) and Anderson (p) Counties	Nonattainment	Big Brown	Shut down 2/12/18	SPM monitor Activation date 10/30/2017
Rusk (p) and Panola (p) Counties	Nonattainment	Martin Lake	Expected to continue operation	SPM Monitor Activation date 11/1/2017

(p) only part of the county is included in designated area

#### LATEST PETITION FOR RECONSIDERATION:

- TCEQ's petition provided *new* information for the areas around Big Brown and Monticello. TCEQ described the shutdowns, the resources that would be needed to prepare an attainment SIP, publish it for notice and hearing, and adopt it and submit by July 12, 2018. TCEQ characterized as also burdensome, to go through the rulemaking process for a redesignation request and maintenance SIP. Because this information was not available at the time of designation, it does not provide evidence that the original decision was in error.
- TCEQ asked EPA to designate these two areas now to attainment or unclassifiable/attainment.
- TCEQ stated that SO<sub>2</sub> monitors have been deployed at Big Brown and Martin Lake.
- TCEQ reiterated its position opposing our choice of modeling vs. monitoring for SO<sub>2</sub> designations, and our reliance on Sierra Club modeling.
- The petition did not ask for any specific relief on Milam County where Sadow is located probably because the area is designated unclassifiable,

#### **ENVIRONMENTAL/PUBLIC HEALTH CONCERNS:**

- For the Monticello, Big Brown and Sadow facilities, environmental concerns would be addressed if the shut downs are permanent and enforceable. As of 3/14/2018, the permits for Sadow and Monticello have been voided addressing this concern for these facilities.
- Since Martin Lake will continue to operate, environmental concerns remain about SO<sub>2</sub> impacts.

**Current Status:** Briefed OAR/OGC/OAQPS on February 22 to discuss potential paths forward to address designations in these areas. Region 6 is preparing information describing requirements for clean data determination and maintenance SIP options to have further discussions with Texas.

- Texas SIP attainment plan is due July 12, 2018.

 **W**orkforce Diversity, **E**nvironmental Stewardship, **C**haracter, **A**ccountability, **R**espect, **E**xcellence

Message

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**From:** Donaldson, Guy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2A0969773664CC3B6EB1208748F1A5D-DONALDSON, GUY]  
**Sent:** 3/13/2018 12:27:16 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** RE: Hot issues for ECOS

Thanks for pulling these together.

---

**From:** Feldman, Michael  
**Sent:** Monday, March 12, 2018 4:34 PM  
**To:** Price, Lisa <Price.Lisa@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>  
**Cc:** McGee, Tomika <McGee.Tomika@epa.gov>  
**Subject:** Hot issues for ECOS

Updated briefing sheets for ECOS:

1. Louisiana Regional Haze
2. Texas Regional Haze
3. Arkansas Regional Haze
4. Texas SO2 designated nonattainment areas
5. Texas 2008 Ozone Transport disapproval and litigation
6. St. Bernard SO2 attainment demonstration

*Michael Feldman, PhD*

Air Planning Section  
U.S. EPA Region 6, 6MM-AA  
Phone: 214-665-9793  
[feldman.michael@epa.gov](mailto:feldman.michael@epa.gov)



## Appointment

---

**From:** Olszewski, Joshua [olszewski.joshua@epa.gov]  
**Sent:** 1/19/2018 3:03:05 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
  
**Subject:** Accepted: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Ling, Michael [Ling.Michael@epa.gov]  
**Sent:** 1/19/2018 2:32:31 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
  
**Subject:** Accepted: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM  
  
**Recurrence:** (none)

## Appointment

---

**From:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor [R6-ConfRm-RioGrande-11B15@epa.gov]  
**Sent:** 1/18/2018 10:57:47 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
  
**Subject:** Accepted: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM

**Recurrence:** (none)

**Your request was accepted.**

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Sent by Microsoft Exchange Server 2016



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK, NC 27711

FEB 24 2017

OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

Mr. Daniel Jude Kelly  
Vice President and  
Associate General Counsel  
Vistra Energy Corporation  
1601 Bryan Street  
Dallas, Texas 75201

Dear Mr. Kelly:

Thank you for your letter of February 13, 2017, to U.S. Environmental Protection Agency Acting Administrator Catherine McCabe transmitting a petition for reconsideration and administrative stay, regarding the EPA's December 13, 2016, final rule titled, "Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County." In the petition, Vistra Energy Corporation requests that the EPA reconsider and immediately stay the effective date of the final rule for the three areas in Texas designated as nonattainment for the 2010 SO<sub>2</sub> Primary National Ambient Air Quality Standard. The Administrator has asked me to respond on his behalf to acknowledge receipt of the petition.

We will carefully review and consider the information set forth in the petition for reconsideration. If you have any questions, please contact me or have your staff contact Anna Marie Wood of the Office of Air Quality Planning and Standards at [wood.anna@epa.gov](mailto:wood.anna@epa.gov) or (919) 541-3604.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen D. Page".

Stephen D. Page  
Director  
Office of Air Quality Planning  
and Standards



**E. SCOTT PRUITT**  
**ADMINISTRATOR**

September 21, 2017

Mr. Daniel Jude Kelly  
Vice President and Associate General Counsel  
Vistra Energy  
1601 Bryan Street  
Dallas, Texas 75201

Re: Response to Petition for Reconsideration and Administrative Stay

Dear Mr. Kelly:

Thank you for your petition for reconsideration and administrative stay dated February 13, 2017, to U.S. Environmental Protection Agency Acting Administrator Catherine McCabe regarding the EPA's December 13, 2016, final rule titled, "Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard – Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County" (81 FR 89870). In the petition, Vistra Energy Corporation requests that the EPA reconsider and immediately stay the effective date of the final rule for the three areas in Texas designated as nonattainment for the 2010 SO<sub>2</sub> Primary National Ambient Air Quality Standard.

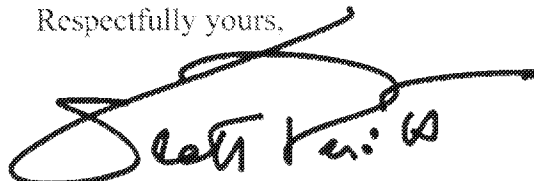
We applaud the state and company's commitment to setting up a monitoring network and stand ready to provide constructive guidance regarding the best methods for collecting air quality information for these areas. After review of the information contained in your petition, we intend to undertake an administrative action with notice and comment to revisit the nonattainment designation for the portions of Freestone and Anderson Counties, Rusk and Panola Counties and Titus County. While the notice-and-comment action is pending, the SO<sub>2</sub> nonattainment designations for portions of Freestone and Anderson Counties, Rusk and Panola Counties and Titus County set out in the December 13, 2016, *Federal Register* remain effective.

While the designations for these areas remain effective, the EPA is considering a variety of administrative options for revisiting them, some of which may alleviate associated and pending planning obligations. It is our intent to provide clarity regarding any potential changes before the state or regulated entity expend resources investing in regulatory obligations that are currently required. Accordingly, in order to better assist us in considering the available administrative

options, we remain interested in a continued dialogue to discuss the state agency and stakeholder resource decisions likely to be impacted during the pendency of this review.

If you have any questions, please contact me or have your staff contact Anna Marie Wood of the Office of Air Quality Planning and Standards at [wood.anna@epa.gov](mailto:wood.anna@epa.gov) or (919) 541-3604.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, stylized flourish above the name.

E. Scott Pruitt



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK, NC 27711

APR 7 2017

OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

Mr. Richard A. Hyde, P.E.  
Executive Director  
Texas Commission on Environmental Quality  
Post Office Box 13087  
Austin, Texas 78711-3087

Dear Mr. Hyde:

Thank you for your interest in the Environmental Protection Agency's December 13, 2016, final rule titled, "Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County." In a letter dated March 15, 2017, to U.S. EPA Administrator Scott Pruitt, the Texas Commission on Environmental Quality requests that the EPA immediately stay the effective date of the final rule for the three areas in Texas designated as nonattainment for the 2010 SO<sub>2</sub> standard. Administrator Pruitt has asked me to respond on his behalf to acknowledge receipt of the request.

We will carefully review and consider the information set forth in the request for administrative stay. If you have any questions, please contact me or have your staff contact Anna Marie Wood of the Office of Air Quality Planning and Standards at [wood.anna@epa.gov](mailto:wood.anna@epa.gov) or (919) 541-3604.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen D. Page", written over a circular stamp or seal.

Stephen D. Page  
Director  
Office of Air Quality Planning  
and Standards

**eDiscovery MS Outlook Search request through HQ (FOIA/Congressional/Litigation/Employment)**

Please fill in as indicated to continue the process.

**Request Date:** 10/30/17

**Request Title or Identifier:** FOIA Request – EPA-R6- 2018-000248

**Relevant Information:** [MS Outlook email search needed for user name [ First/Last Name and email address(es)-include any additional instructions, email files for an ex-employee-provide the name(s), who will be the reviewer(s) [First/Last Name and email address(es)] of the collection search or additional information to provide to the search technicians who will process your request]: email addresses for following :

Donaldson.Guy@epa.gov, Gray.david@epa.gov, coleman.sam@epa.gov, payne.james@epa.gov, smith.suzanne@epa.gov, Snyder.erik@epa.gov, stenger.wren@epa.gov, olszewski.joshua@epa.gov, shar.alan@epa.gov, todd.robert@epa.gov, lmhoff.robert@epa.gov

---

Bob Imhoff (5-7262) and Erik Snyder will be the reviewers

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**Keywords:** [Enter unique words or phrases to be used to identify potentially relevant information for your search request. Use logical operators, “AND”, “OR” and “NOT”, to define search terms.]

[@Bakerbotts.com OR .texas.gov OR @vistraenergy.com OR @luminant.com OR @balch.com ]

AND

[ (SO2 AND designation) OR (sulfur dioxide AND NAAQS) OR (sulfur dioxide AND designation) OR (sulfur dioxide AND NAAQS) OR nonattainment OR Freestone OR Anderson OR Milam County OR Rusk OR Panola OR Titus OR ‘Martin Lake’ OR Monticello OR ‘Big Brown’]

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**Date Range: [From and to]** from: November 30, 2016 to: 9/21/2017

**Required by Date:** 11/7/2017. We will need to request an extension for this FOIA.

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## Appointment

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**From:** Carrillo, Andrea [Carrillo.Andrea@epa.gov]  
**Sent:** 1/29/2018 3:45:43 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
  
**Subject:** Accepted: FW: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM  
**Show Time As:** Busy

## Appointment

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**From:** Vijayan, Abi [Vijayan.Abi@epa.gov]  
**Sent:** 1/29/2018 3:45:00 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
  
**Subject:** Accepted: FW: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM  
**Show Time As:** Busy

## Appointment

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**From:** Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]  
**Sent:** 1/29/2018 3:44:57 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** Meeting Forward Notification: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM

**Recurrence:** (none)

## Your meeting was forwarded

Vijayan, Abi has forwarded your meeting request to additional recipients.

### Meeting

Texas SO2 non-attainment areas with shutdowns

### Meeting Time

Monday, January 29, 2018 1:00 PM-2:00 PM.

### Recipients

Carrillo, Andrea

All times listed are in the following time zone: (UTC-06:00) Central Time (US & Canada)

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Sent by Microsoft Exchange Server

Message

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**From:** Olson, Janice [Olson.Janice@epa.gov]  
**Sent:** 6/20/2018 7:34:40 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** RE: Out morning of 6/21

Thanks, Michael. I hope all goes well.

*Janice*

**Janice Olson**  
Administrative Assistant &  
Communications Specialist  
Cube 11.171 ~ Ext.: 2791 ~ R6-6MM-A

*"The secret of getting ahead is getting started." ~ Mark Twain*

Consider the environment before you print any email.

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**From:** Feldman, Michael  
**Sent:** Wednesday, June 20, 2018 2:33 PM  
**To:** Verhalen, Frances <verhalen.frances@epa.gov>  
**Cc:** Olson, Janice <Olson.Janice@epa.gov>  
**Subject:** Out morning of 6/21

Fran – I will be out of the office on sick leave tomorrow morning. My son is having an ear tube removed as it did not fall out on its own. I will be working from home in the afternoon. I will submit a leave slip once I know how many hours I will be out. I'll have my phone with me if anything comes up.

Erik Snyder will be acting in my absence.

There is a 3pm call with Clint Woods, David Harlow and OAR/OAQPS to discuss the revisiting of SO2 nonattainment area designations in Texas and the 2015 TX Ozone transport SIP. I will call in for that. Wren and others will be taking it in her conference room on the 7<sup>th</sup> floor. Jeff has a permitting related call at 2pm with the same folks in RTP.

**Michael Feldman, PhD**  
Air Planning Section  
U.S. EPA Region 6, 6MM-AA  
Phone: 214-665-9793  
[feldman.michael@epa.gov](mailto:feldman.michael@epa.gov)

## Appointment

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**From:** Brachtl, Megan [Brachtl.Megan@epa.gov]  
**Sent:** 1/29/2018 12:55:59 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
  
**Subject:** Accepted: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM  
**Show Time As:** Busy

## Appointment

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**From:** Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]  
**Sent:** 1/26/2018 7:32:26 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** Meeting Forward Notification: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM

**Recurrence:** (none)

## Your meeting was forwarded

Smith, Kristi has forwarded your meeting request to additional recipients.

### Meeting

Texas SO2 non-attainment areas with shutdowns

### Meeting Time

Monday, January 29, 2018 1:00 PM-2:00 PM.

### Recipients

Vijayan, Abi

All times listed are in the following time zone: (UTC-06:00) Central Time (US & Canada)

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Sent by Microsoft Exchange Server

## Appointment

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**From:** Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]  
**Sent:** 1/26/2018 7:06:46 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** Meeting Forward Notification: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM

**Recurrence:** (none)

## Your meeting was forwarded

Ting, Kaytrue has forwarded your meeting request to additional recipients.

### Meeting

Texas SO2 non-attainment areas with shutdowns

### Meeting Time

Monday, January 29, 2018 1:00 PM-2:00 PM.

### Recipients

Hawes, Todd

Naess, Liz

Smith, Kristi

All times listed are in the following time zone: (UTC-06:00) Central Time (US & Canada)

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Sent by Microsoft Exchange Server

## Appointment

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**From:** Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]  
**Sent:** 1/26/2018 4:10:04 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** Meeting Forward Notification: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM

**Recurrence:** (none)

## Your meeting was forwarded

Brachtl, Megan has forwarded your meeting request to additional recipients.

### Meeting

Texas SO2 non-attainment areas with shutdowns

### Meeting Time

Monday, January 29, 2018 1:00 PM-2:00 PM.

### Recipients

Senter, Stephen

All times listed are in the following time zone: (UTC-06:00) Central Time (US & Canada)

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Sent by Microsoft Exchange Server



Message

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**From:** Huser, Jennifer [Huser.Jennifer@epa.gov]  
**Sent:** 2/5/2018 9:48:08 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** RE: Fact sheets for RA  
**Attachments:** TX RH Background and Status.docx

Sorry this took a bit longer than anticipated. There was a lot to condense. It's just over 1 pg, but I'm not sure how much more to trim (aside from playing with font/margins). Let me know if you have any suggestions.

Thanks!

---

**From:** Feldman, Michael  
**Sent:** Monday, February 5, 2018 11:58 AM  
**To:** Casso, Ruben <Casso.Ruben@epa.gov>; Medina, Dayana <Medina.Dayana@epa.gov>; Imhoff, Robert <imhoff.robert@epa.gov>; Huser, Jennifer <Huser.Jennifer@epa.gov>  
**Subject:** Fact sheets for RA

The RA will be meeting soon with members of the House and Senate for our states. We have been asked to prepare fact sheets by COB today on our "thorny issues" that may come up. Please put together a one-pager or less on these topics. Really just looking for a paragraph or two on background and current status. Please borrow from recent briefing sheets, WAR entries and other materials as available to help.

We may get a template from XA later today but so far I haven't seen anything.

TX SO2 non-attainment areas – Ruben  
AR Regional Haze – Dayana  
St. Bernard Parish – Bob  
Texas RH - Jennifer

Please try to get these to me by 3pm today so I can flip them up to guy for review.

Thank you!

*Michael Feldman, PhD*

Air Planning Section  
U.S. EPA Region 6, 6MM-AA  
Phone: 214-665-9793  
[feldman.michael@epa.gov](mailto:feldman.michael@epa.gov)

Message

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**From:** Carrillo, Andrea [Carrillo.Andrea@epa.gov]  
**Sent:** 2/9/2018 2:18:47 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** RE: TX SO2 nonattainment litigation status

Sorry, I should have added that since that falls on a Saturday, I don't think it will be due until 3/12/18.

Andrea Carrillo  
Attorney-Advisor  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-3392 (office) | (202) 603-4003 (telework/cell) | WJCN 7426PP

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**From:** Feldman, Michael  
**Sent:** Friday, February 09, 2018 9:05 AM  
**To:** Carrillo, Andrea <Carrillo.Andrea@epa.gov>  
**Subject:** TX SO2 nonattainment litigation status

Andrea – when is the next report to the court due on this case? I have a note that the last one was 1/10.

*Michael Feldman, PhD*  
Air Planning Section  
U.S. EPA Region 6, 6MM-AA  
Phone: 214-665-9793  
[feldman.michael@epa.gov](mailto:feldman.michael@epa.gov)

Message

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**From:** Carrillo, Andrea [Carrillo.Andrea@epa.gov]  
**Sent:** 2/9/2018 2:17:33 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
**Subject:** RE: TX SO2 nonattainment litigation status

They are due every 90 days, so next one is due 3/10/18.

Andrea Carrillo  
Attorney-Advisor  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-3392 (office) | (202) 603-4003 (telework/cell) | WJCN 7426PP

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**From:** Feldman, Michael  
**Sent:** Friday, February 09, 2018 9:05 AM  
**To:** Carrillo, Andrea <Carrillo.Andrea@epa.gov>  
**Subject:** TX SO2 nonattainment litigation status

Andrea – when is the next report to the court due on this case? I have a note that the last one was 1/10.

*Michael Feldman, PhD*  
Air Planning Section  
U.S. EPA Region 6, 6MM-AA  
Phone: 214-665-9793  
[feldman.michael@epa.gov](mailto:feldman.michael@epa.gov)

## Appointment

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**From:** Watson, Lucinda [Watson.Lucinda@epa.gov]  
**Sent:** 1/23/2018 7:54:49 PM  
**To:** Feldman, Michael [Feldman.Michael@epa.gov]  
  
**Subject:** Accepted: FW: Texas SO2 non-attainment areas with shutdowns  
**Location:** R6-ConfRm-RioGrande-11B15/R6---11th-Floor  
  
**Start:** 1/29/2018 7:00:00 PM  
**End:** 1/29/2018 8:00:00 PM  
**Show Time As:** Busy